

March 28, 2022

1426

3 SHERROD, TEED, VANDERHAGEN and WARE,

4 Plaintiffs,

- V -

Case No. 17-10164

VNA and LAN

## Defendants.

1

JURY TRIAL

BEFORE THE HONORABLE JUDITH E. LEVY  
UNITED STATES DISTRICT JUDGE

MARCH 28, 2022

## APPEARANCES:

For the Corey M. Stern  
14 Plaintiffs: Levy Konigsberg, LLP  
605 Third Avenue, 33rd Floor  
15 New York, New York 10158

Moshe Maimon  
Levy Konigsberg, LLP  
605 Third Avenue, 33rd Floor  
New York, New York 10158

Melanie Daly  
Levy Konigsberg, LLP  
605 Third Avenue, 33rd Floor  
New York, New York 10158

(Appearances Continued on Next Page)

24 TO OBTAIN A  
CERTIFIED  
TRANSCRIPT:

JESECA C. EDDINGTON, RDR, RMR, CRR, FCRR  
FEDERAL OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT  
200 EAST LIBERTY STREET  
ANN ARBOR, MICHIGAN 48104

March 28, 2022

1427

1      For the VNA  
2      Defendants:

Daniel Stein  
Mayer Brown LLP  
1221 Avenue of the Americas  
New York, New York 10020

James M. Campbell  
Campbell Conroy & O'Neil, P.C.  
1 Constitution Wharf, Suite 310  
Boston, Massachusetts 02129

Marcus Christian  
Mayer Brown LLP  
1999 K Street NW  
Washington, District of Columbia 20006

Cheryl A. Bush  
Bush, Seyferth PLLC  
100 West Big Beaver Road, Suite 400  
Troy, Michigan 48084

11     For the LAN  
12     Defendants:

Wayne Brian Mason  
Faegre Drinker Biddle & Reath LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201

David C. Kent  
Faegre Drinker Biddle & Reath LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201

Tory Finley  
Faegre Drinker Biddle & Reath LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201

Philip A. Erickson  
Plunkett & Cooney  
325 East Grand River Avenue, Suite 250  
East Lansing, Michigan 48823

21

22

23

24

25

March 28, 2022

1428

**I N D E X**

	<u>WITNESSES</u>	<u>PAGE</u>	
3	Recorded Deposition of David Gadis Played (Continued) ..	1436	
4	DAYNE WALLING		
5	Direct examination by Mr. Stern.....	1446	
5	Voir Dire examination by Mr. Christian..	1546	
6	Direct examination(cont.)by Mr. Stern...	1546	
7			
8	<u>EXHIBITS</u>	<u>Marked</u>	<u>Admitted</u>
9	Plaintiff		
10	458.....	1438	1438
11	459.....	1438	1438
12	460.....	1438	----
13	461.....	1439	1439
14	462.....	1439	1439
15	463.....	1439	1439
16	463-1.....	1439	1440
17	464.....	1440	1440
18	465.....	1440	1441
19	466.....	1441	1441
20	467.....	1441	1441
21	468.....	1441	1441
22	469.....	1441	1441
23	470.....	1441	1441
24	471.....	1441	1442
25	472.....	1442	1442
26	473.....	1442	1442
27	474.....	1442	1442
28	475.....	1442	1442
29	476.....	1442	1442
30	477.....	1442	1442
31	478.....	1443	1443
32	479.....	1443	1443
33	480.....	1443	1443
34	481.....	1443	1443
35	482.....	1443	1443
36	483.....	1443	1443
37	489.....	1443	1444
38	496.....	1444	1444
39	497.....	1444	1444

(CONTINUED ON NEXT PAGE)

March 28, 2022

1429

1	(CONTINUED FROM PREVIOUS PAGE)	
2	498.....	1444
3	602-43A.....	1525
4	602-43B.....	1533
5	1097.....	1545
6	1098.....	1549
7	1099.....	1552
8	1100.....	1557
9	1101.....	1561
10	1105.....	1565
11	3601.....	1436
12	3602.....	1437
13	3603.....	1437
14	3605.....	1437
15	3606.....	1438

12	<u>MISCELLANY</u>	<u>PAGE</u>
13	Proceedings.....	1430
14	Certificate.....	1588

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

March 28, 2022

1430

## PROCEEDINGS

THE CLERK: Calling Sherrod, Teed, Vanderhagen and Ware vs VNA and LAN.

4 THE COURT: Please be seated, and we will have  
5 appearances. I'm just going to log on here.

6 MR. CHRISTIAN: Good morning, Your Honor. Marcus  
7 Christian, Daniel Stein, and James Campbell on behalf of VNA.

THE COURT: Okay. Thank you.

9 MR. MASON: Wayne Mason, Philip Erickson, David Kent  
10 for LAN.

11 THE COURT: Thank you.

12 MR. STERN: Sorry, Your Honor. I was in the  
13 restroom.

14 THE COURT: That's all right.

15 MR. STERN: Corey Stern and Moshe Maimon for the  
16 bellwether plaintiffs. And good morning.

17 THE COURT: Good morning.

18 || Oh, yeah. You're Mr. Maimon.

19 MR. MAIMON: If I can hand up, Your Honor, in looking  
20 at the binders that we gave everybody regarding Mr. Gadis's  
21 testimony, Tabs 26 and 27 have the same exhibits in them.

THE COURT: Oh, okay.

23 MR. MAIMON: And so if I can hand up -- I've given  
24 defense counsel the proper document for Tab 27.

25 THE COURT: Sure. So we have, like, 14 minutes or

March 28, 2022

1431

1       something left of Mr. Gadis.

2            MR. STERN: Yes, Judge. Something to that effect.

3            THE COURT: Okay.

4            MR. MAIMON: 24 minutes.

5            THE COURT: Okay. I think I just need to still  
6 finish logging in. I think we're waiting for a juror still.

7 Let's see. We are, yeah.

8            And I have the letter regarding Ms. White's  
9 testimony. But I need to get the computer to start, so I'll  
10 be patient for that.

11           I hope everybody -- I hope there was a good birthday,  
12 a successful baseball game.

13           MR. STERN: Thank you. Unsuccessful baseball game,  
14 but --

15           THE COURT: Well it's successful, win, lose.

16           MR. STERN: I successfully got there.

17           THE COURT: You got there. That's successful.

18           When my kids were like 3 and 4, you know, tee-ball --  
19 they played tee-ball. And we would tell them you're not -- in  
20 Ann Arbor, you're not allowed to keep score. It's  
21 impermissible, it's unlawful to keep score.

22           So we -- but the kids are keeping score immediately.  
23 And all they want to do is win. So it never worked. Except  
24 that I am the proud mother of a daughter who played tee-ball,  
25 basketball, and soccer two times a year from pre-K to eighth

March 28, 2022

1432

1 grade and never scored a point in anything. So there you go.

2 Okay. So we are -- okay.

3 Oh, our last juror is here. So what we'll do is make  
4 sure that they come down right at -- oops -- at 9:00.

5 So I have read your materials regarding Ms. White.

6 And I don't have it open right now.

7 MR. CAMPBELL: We had a discussion, "we" being  
8 myself, Mr. Maimon, and Mr. Mason, just now about this issue.  
9 And if we could table the Ms. White issue until after court or  
10 at a convenient time to take it up in chambers, that would be  
11 great.

12 THE COURT: Let's do that. Okay. That sounds like a  
13 very good approach. Okay.

14 Well, then I'll -- are you ready for the jury?

15 MR. CHRISTIAN: Your Honor, there is one other issue  
16 that we'd like to raise. It's with respect to nonparties'  
17 testimony during this trial.

18 MR. MAIMON: I don't think it's appropriate. If we  
19 don't have the defense -- the criminal defense lawyers --

20 MR. CHRISTIAN: It's not -- it has nothing to do with  
21 them, Your Honor. I just haven't had a chance to talk to  
22 Mr. Maimon about it. It has to do -- or Mr. Mason, for that  
23 matter this morning.

24 It has to do with -- as you may recall with similar  
25 witnesses, there's been a little confusion about whether

March 28, 2022

1433

1           cross-examination can include leading questions.

2           THE COURT: Yes.

3           MR. CHRISTIAN: And so we're taking the position that  
4 with these nonparties, that they're adverse parties, and we  
5 should be able to lead. And we --

6           THE COURT: I've allowed that.

7           MR. CHRISTIAN: Sure, Your Honor. I just wanted to  
8 make sure that we understood -- that we had that understanding  
9 going forward, so we could proceed --

10          THE COURT: Well, we have it going backwards. And so  
11 we also have it going forward. Unless you'd like some -- did  
12 something come up or --

13          MR. CHRISTIAN: No, Your Honor. Just the fact that  
14 there were objections to that, so I wanted to make sure going  
15 forward that we're clear.

16          THE COURT: They were overruled.

17          MR. CHRISTIAN: Thank you.

18          THE COURT: I'll deal with objections as they come  
19 up. Of course, if you foreshadow them, you file the motion in  
20 limine and so on, if I ruled one way to the extent that I have  
21 the presence of mind to continue ruling in that way, I  
22 anticipate doing that.

23          MR. STERN: Your Honor, there's a -- if I may?

24          THE COURT: Yes.

25          MR. STERN: There's a fundamental difference between

March 28, 2022

1434

1       taking the testimony as a defendant of Warren Green who was  
2       not part of a group or individually named as a nonparty at  
3       fault and taking the testimony of someone who has been named a  
4       nonparty at fault.

5                  And so the --

6                  THE COURT: But so VNA is hoping to shift fault to  
7       LAN, correct, Mr. Christian?

8                  MR. STERN: No.

9                  THE COURT: I'm asking Mr. Christian, because he will  
10      know if he's --

11                 MR. CHRISTIAN: LAN will be a nonparty at fault.

12                 THE COURT: LAN's a party.

13                 MR. CHRISTIAN: It will be a party on the verdict  
14      sheet, Your Honor. It all adds up to a hundred. So obviously  
15      it's a zero sum, and they would take the same position.

16                 MR. STERN: Yeah. But there's no cross claims  
17      against LAN. They've filed three different nonparties at  
18      fault submissions to a tune of 400 pages and have never once  
19      pointed the finger at LAN.

20                 THE COURT: Yeah, but LAN is a party. So they  
21      couldn't file LAN in the nonparty. So they're just here at  
22      trial to say, "Not us. It's Snyder. It's Croft. It's this  
23      one. It's LAN. It's you. You know, it's everybody."

24                 MR. STERN: Sure.

25                 THE COURT: And so I permitted cross of Warren Green

March 28, 2022

1435

1 by VNA and cross of -- well, I don't know what live witnesses  
2 we've had from Mr. Mason. But -- and I foresee going forward  
3 that way.

4 MR. STERN: Okay.

5 MR. CHRISTIAN: Thank you, Your Honor.

6 THE COURT: And our jurors are on the way.

7 It's a nice, warm day here in Michigan. I hope you  
8 like it. We're going backwards.

9 MR. STERN: And, Judge, I assume that because it all  
10 adds up to a hundred and because they're all on the jury  
11 sheet, that we, too, are able to treat witnesses as though  
12 they are adverse witnesses at times where we feel it's  
13 appropriate, even if the case is only about LAN and VNA.

14 THE COURT: If it's a hostile witness, it's a hostile  
15 witness. You've got it. Yeah. And you can start with direct  
16 and realize the witness has turned hostile, say, "Hey, we've  
17 got a hostile witness here." And I'll say, "Go forward."

18 MR. STERN: Thank you.

19 THE COURT: I didn't watch the Oscars. I don't have  
20 a television. I have to, you know -- but I wish I had.

21 THE CLERK: All rise for the jury.

22 THE COURT: Hello. Happy Monday is right. Welcome.  
23 Hello. Hello. Welcome back.

24 (Jury In)

25 THE COURT: Okay. Please be seated. Welcome back to

March 28, 2022

1436

1       the jury. It's very, very good to see you. I really mean  
2 this. I miss you when you're not here. It's good to have  
3 company. This can be a very solo kind of job a lot of the  
4 time. So it's just great to have so much company helping me  
5 do my job and all of us.

6                   So we have about 20 something minutes left of Mr.  
7 Gadis. And then we will move on to the next witness. So  
8 we'll go ahead.

9                   (Recorded Deposition of David Gadis Played (continued))

10                  THE COURT: So what we need to do is admit the  
11 exhibits so that you all know that -- which exhibits that  
12 you've seen on the screen are going to be received in  
13 evidence. And we need to go back to Mr. Benes's, as well.

14                  MR. MAIMON: Yes.

15                  THE COURT: So let me grab my high tech situation  
16 here, which is a yellow sticky. I assure you Jeseca's got the  
17 official record, but I like to follow along as well.

18                  Okay. So we'll start with Mr. Benes.

19                  MR. MAIMON: Mr. Benes, that's fine.

20                  THE COURT: Whatever you want.

21                  MR. MAIMON: Mr. Benes is fine.

22                  THE COURT: Okay.

23                  MR. MAIMON: So with Mr. Benes, Your Honor, we would  
24 offer Exhibit 3601, which is --

25                  THE COURT: Is it going to be Plaintiffs' Exhibit --

March 28, 2022

1437

1                   MR. MAIMON: Yes. Plaintiffs' Exhibit 3601, which  
2 was Exhibit 2 to his deposition.

3                   THE COURT: And I guess what I'm going to ask for  
4 from defense counsel is if you'll just wave or something --  
5 I'll assume there's no objection?

6                   MR. ERICKSON: No objection, Your Honor.

7                   THE COURT: Okay. So 3601 is received.

8                   (Plaintiff Exhibit No. 3601 Admitted Into Evidence.)

9                   MR. MAIMON: 3602, which was deposition Exhibit 3.

10                  MR. ERICKSON: No objection.

11                  THE COURT: Okay. That's received.

12                  (Plaintiff Exhibit No. 3602 Admitted Into Evidence.)

13                  MR. MAIMON: Plaintiffs' Exhibit 3603. With only the  
14 leasing agreement, not the pleading that it was attached to.  
15 We're offering that into evidence. That was deposition  
16 Exhibit 4.

17                  THE COURT: Okay.

18                  MR. ERICKSON: No objection.

19                  THE COURT: That's received.

20                  (Plaintiff Exhibit No. 3603 Admitted Into Evidence.)

21                  MR. MAIMON: Plaintiffs' Exhibit 3605, which was  
22 deposition Exhibit 6.

23                  MR. ERICKSON: No objection.

24                  THE COURT: That's received.

25                  (Plaintiff Exhibit No. 3605 Admitted Into Evidence.)

March 28, 2022

1438

1           MR. MAIMON: And then Plaintiffs' Exhibit 3606, which  
2 was deposition Exhibit 7. And, again, only the documents  
3 attached to the pleading and not the pleading itself.

4           THE COURT: Okay.

5           MR. ERICKSON: And no objection.

6           THE COURT: And that's received.

7           (Plaintiff Exhibit No. 3606 Admitted Into Evidence.)

8           THE COURT: And then do we move to Mr. Gadis?

9           MR. MAIMON: Yes, Your Honor.

10          THE COURT: Okay.

11          MR. MAIMON: And so we would offer the following  
12 exhibits. Plaintiffs' Exhibit 458, which was Exhibit 2 to the  
13 deposition.

14          THE COURT: That will be received.

15          (Plaintiff Exhibit No. 458 Admitted Into Evidence.)

16          MR. MAIMON: Exhibit 459, which was Exhibit 3 to the  
17 deposition.

18          THE COURT: That will be received.

19          (Plaintiff Exhibit No. 459 Admitted Into Evidence.)

20          MR. MAIMON: Plaintiffs' Exhibit 460, which is  
21 Exhibit 4 to his deposition.

22          MR. CAMPBELL: Your Honor, on that one, I would like  
23 an opportunity to review it. There's a lot of material in  
24 that that has nothing to do with Flint.

25          THE COURT: Oh, it's things that don't relate to our

March 28, 2022

1439

1 case are also in there?

2 MR. CAMPBELL: Yes.

3 THE COURT: Okay. So I'll just put a little box  
4 around that one and you can let me know if there are just  
5 certain pages that we should exclude or use.

6 Mr. Maimon.

7 MR. MAIMON: Yes. Next is Exhibit 461, which was  
8 Exhibit 5 to the deposition.

9 THE COURT: That will be received.

10 (Plaintiff Exhibit No. 461 Admitted Into Evidence.)

11 MR. MAIMON: Plaintiffs' Exhibit 462, which was  
12 Exhibit 2 to the deposition.

13 THE COURT: Did you say 462?

14 MR. MAIMON: Yes, Your Honor.

15 THE COURT: But the other was 561?

16 MR. MAIMON: 461.

17 THE COURT: Oh. For some reason I put a 5. Okay.  
18 Okay. That will be received.

19 (Plaintiff Exhibit No. 462 Admitted Into Evidence.)

20 MR. MAIMON: Then we have Plaintiffs' Exhibit 463,  
21 which was Exhibit 7 to the deposition.

22 THE COURT: Received, as well.

23 (Plaintiff Exhibit No. 463 Admitted Into Evidence.)

24 MR. MAIMON: And we've marked and would offer 463-1,  
25 which is the audio. We put it on a flash drive -- of what was

March 28, 2022

1440

1 just played, the full audio.

2 THE COURT: Mr. Campbell?

3 MR. CAMPBELL: Your Honor, on both of those there,  
4 I'd like an opportunity to review it, because it was an entire  
5 public hearing. I don't know that everything on either the  
6 transcript or the recording has to do with the Flint issue.

7 It was a city council meeting, and there might be  
8 other stuff on there.

9 THE COURT: Yeah. If there is, then it's just  
10 whatever happened at that council meeting.

11 MR. MAIMON: I think it's only the public meeting,  
12 and it's not the private city council meeting, which is on  
13 neither.

14 THE COURT: Okay. Well, my inclination is to receive  
15 it, and it's the portions that relate to our case that will be  
16 of interest. But I can't imagine that there would be anything  
17 that can't be a part of the record.

18 (Plaintiff Exhibit No. 463-1 Admitted Into Evidence.)

19 THE COURT: Anything else?

20 MR. MAIMON: Yes. Plaintiffs' Exhibit 464, which was  
21 Exhibit 8 to the deposition.

22 THE COURT: Okay. That's received.

23 (Plaintiff Exhibit No. 464 Admitted Into Evidence.)

24 MR. MAIMON: Plaintiffs' Exhibit 465, which is  
25 Exhibit 9 to the deposition.

March 28, 2022

1441

1                   THE COURT: It's received, as well.

2                   (Plaintiff Exhibit No. 465 Admitted Into Evidence.)

3                   MR. MAIMON: Plaintiffs' Exhibit 466, which was  
4                   Exhibit 10 to the deposition.

5                   THE COURT: Received.

6                   (Plaintiff Exhibit No. 466 Admitted Into Evidence.)

7                   MR. MAIMON: Plaintiffs' Exhibit 467, which was  
8                   Exhibit 11 to the deposition.

9                   THE COURT: That's received.

10                  (Plaintiff Exhibit No. 467 Admitted Into Evidence.)

11                  MR. MAIMON: Plaintiffs' Exhibit 468, which is  
12                  Exhibit 12 to the deposition.

13                  THE COURT: That's also received.

14                  (Plaintiff Exhibit No. 468 Admitted Into Evidence.)

15                  MR. MAIMON: Plaintiffs' Exhibit 469, which was  
16                  Exhibit 13 to the deposition.

17                  THE COURT: That's received.

18                  (Plaintiff Exhibit No. 469 Admitted Into Evidence.)

19                  MR. MAIMON: Plaintiffs' Exhibit 470, which was  
20                  Exhibit 14 to the deposition.

21                  THE COURT: Also received.

22                  (Plaintiff Exhibit No. 470 Admitted Into Evidence.)

23                  MR. MAIMON: Plaintiffs' Exhibit 471, which was  
24                  Exhibit 15 to the deposition.

25                  THE COURT: That's received.

March 28, 2022

1442

1                   (Plaintiff Exhibit No. 471 Admitted Into Evidence.)

2                   MR. MAIMON: Plaintiffs' Exhibit 472, which was  
3                   Exhibit 16 to the deposition.

4                   THE COURT: Received.

5                   (Plaintiff Exhibit No. 472 Admitted Into Evidence.)

6                   MR. MAIMON: Plaintiffs' Exhibit 473, which was  
7                   exhibit 17 to the deposition.

8                   THE COURT: Also received.

9                   (Plaintiff Exhibit No. 473 Admitted Into Evidence.)

10                  MR. MAIMON: Plaintiffs' Exhibit 474, which was  
11                  Exhibit 18 to the deposition.

12                  THE COURT: Received.

13                  (Plaintiff Exhibit No. 474 Admitted Into Evidence.)

14                  MR. MAIMON: Plaintiffs' Exhibit 475, which was  
15                  Exhibit 19 to the deposition.

16                  THE COURT: It's received.

17                  (Plaintiff Exhibit No. 475 Admitted Into Evidence.)

18                  MR. MAIMON: Plaintiffs' Exhibit 476, which was  
19                  exhibit 20 to the deposition.

20                  THE COURT: And that's received.

21                  (Plaintiff Exhibit No. 476 Admitted Into Evidence.)

22                  MR. MAIMON: Plaintiffs' Exhibit 477, which was  
23                  Exhibit 21 to the deposition.

24                  THE COURT: Received.

25                  (Plaintiff Exhibit No. 477 Admitted Into Evidence.)

March 28, 2022

1443

1                   MR. MAIMON: Plaintiffs' Exhibit 478, which was  
2 Exhibit 22 to the deposition.

3                   THE COURT: Received.

4                   (Plaintiff Exhibit No. 478 Admitted Into Evidence.)

5                   MR. MAIMON: Plaintiffs' Exhibit 479, which was  
6 Exhibit 23 to the deposition.

7                   THE COURT: That's received.

8                   (Plaintiff Exhibit No. 479 Admitted Into Evidence.)

9                   MR. MAIMON: Plaintiffs' Exhibit 480, which was  
10 Exhibit 24 to the deposition.

11                  THE COURT: The same. It's received.

12                  (Plaintiff Exhibit No. 480 Admitted Into Evidence.)

13                  MR. MAIMON: Plaintiffs' Exhibit 481, which was  
14 Exhibit 25 to the deposition.

15                  THE COURT: And that's received.

16                  (Plaintiff Exhibit No. 481 Admitted Into Evidence.)

17                  MR. MAIMON: Plaintiffs' Exhibit 482, which was  
18 Exhibit 26 to the deposition.

19                  THE COURT: Received.

20                  (Plaintiff Exhibit No. 482 Admitted Into Evidence.)

21                  MR. MAIMON: Plaintiffs' Exhibit 483, which was  
22 Exhibit 27 to the deposition.

23                  THE COURT: Also received.

24                  (Plaintiff Exhibit No. 483 Admitted Into Evidence.)

25                  MR. MAIMON: Plaintiffs' Exhibit 489, which was

March 28, 2022

1444

1           Exhibit 33 to the deposition.

2           THE COURT: Received.

3           (Plaintiff Exhibit No. 489 Admitted Into Evidence.)

4           MR. MAIMON: Plaintiffs' Exhibit 496, which was  
5           Exhibit 40 to the deposition.

6           THE COURT: Received.

7           (Plaintiff Exhibit No. 496 Admitted Into Evidence.)

8           MR. MAIMON: Plaintiffs' Exhibit 497, which was  
9           Exhibit 41 deposition.

10          THE COURT: Received.

11          (Plaintiff Exhibit No. 497 Admitted Into Evidence.)

12          MR. MAIMON: And Plaintiffs' Exhibit 498, which was  
13          Exhibit 42 to the deposition.

14          THE COURT: Also received.

15          (Plaintiff Exhibit No. 498 Admitted Into Evidence.)

16          THE COURT: Mr. Campbell, any of those that you  
17          object to?

18          MR. CAMPBELL: Your Honor, no objection.

19          THE COURT: Mr. Erickson?

20          MR. CAMPBELL: Other than what I said.

21          MR. ERICKSON: No objections.

22          THE COURT: Okay. All right. Other than what you  
23          noted. And I have a box around that one to return to discuss.  
24          I better find that box. Okay.

25          So, Mr. Maimon, do the plaintiffs have another

March 28, 2022

1445

1       witness who you're ready to call?

2                   MR. STERN: Your Honor, at this time, plaintiffs call  
3 former mayor Dayne Walling to the stand.

4                   THE COURT: Okay. Mr. Walling, if you'd stop right  
5 about there and raise your right hand.

6                   Thereupon,

7                   **D A Y N E      W A L L I N G ,**

8 having been called as a witness and having been first duly  
9 sworn testified as follows:

10                  THE COURT: Then that's our witness box. And when  
11 you get in there, if you wish, you can take your mask off, but  
12 you're not required to. Yeah. There you go. It's a little  
13 tight, isn't it.

14                  MR. STERN: Your Honor, may I approach the witness  
15 box?

16                  THE COURT: Yeah.

17                  THE WITNESS: Oh, I see. The other side was easier.

18                  THE COURT: The other side might have been easier,  
19 but that's okay. There you go.

20                  MR. STERN: Your Honor, may I approach?

21                  THE COURT: Yes.

22                  MR. STERN: This is for you, Your Honor.

23                  THE COURT: Is that one for Jeseca?

24                  MR. STERN: I've got another one.

25                  THE COURT: Oh, okay. Okay.

March 28, 2022

1446

1                   MR. STERN: Just one second.

2                   THE COURT: Okay. Well, while we're getting the  
3 exhibits ready. Could you state your first and last name and  
4 spell both of them. Well, there they are.

5                   THE WITNESS: Yes. My name is Dayne Walling.

6                   D-a-y-n-e, W-a-l-l-i-n-g.

7                   THE COURT: Okay. Thank you.

8                   DIRECT EXAMINATION

9                   BY MR. STERN:

10          Q. Good morning, Mr. Walling. How are you?

11          A. Good morning. I'm fine. Thank you.

12          Q. I appreciate you being here with us today. We've heard  
13 some video testimony, so everybody's probably happy to have a  
14 live witness sitting in the box. So thanks for filling that  
15 role.

16                 Before we even really get started, can you just  
17 explain to the jury who you are and what you do today?

18          A. Yeah. So today my family and I continue to live in Flint,  
19 the same home that we moved back to in 2006. And I'm doing a  
20 few things professionally. So I'm back to the community  
21 development consulting work that I had been doing before I was  
22 in office.

23                 I've also returned to my academic work. I had left a  
24 Ph.D. in geography -- in urban geography when we had moved back  
25 to Flint. So I've reenrolled to finish my doctorate. I'm an

March 28, 2022

1447

1 adjunct professor this semester at Saginaw Valley State  
2 University teaching intro to world geography or human geography  
3 class.

4 Teaching an urban geography class at Central Michigan  
5 University, and I'm teaching sociology civil engagement class  
6 for the Baker College system so.

7 Q. So one thing I'm going to ask you is if you could pull the  
8 microphone a little bit, it just might be easier.

9 A. Yeah, I can't quite tell how loud anything is in this box,  
10 so just let me know.

11 THE COURT: Yeah.

12 BY MR. STERN:

13 Q. It's okay.

14 Where did you grow up?

15 A. I grew up in Flint. I was born -- born in Flint, went to  
16 Flint public schools, graduated from Flint Central High School  
17 1992.

18 Q. And when you graduated in 1992, did you attend college?

19 A. I did. I went to Michigan State University. So a proud  
20 Spartan.

21 Q. You mentioned that you also had received advanced degrees  
22 and were in the process presently of finishing a degree. When  
23 you graduated from Michigan State, I imagine that was as an  
24 undergrad; is that correct?

25 A. Yes. And I did -- I had the great fortune of receiving

March 28, 2022

1448

1      both a Harry Truman scholarship for public service leadership  
2      and then a road scholarship, which allowed me to study  
3      University of Oxford in the United Kingdom. So I earned a  
4      second bachelor's in modern history.

5                Modern history for Oxford, by the way, starts with  
6      the Roman occupation of the British Isles in 46AD. It's a  
7      little different picture than we have here in the United  
8      States.

9                I continued on while I was there because of my -- on  
10     a passion and work around urban affairs. I took a master's, a  
11     one year master's in contemporary urban affairs from the  
12     Goldsmith College, which is part of the University of London  
13     system.

14               So I was in the UK for three years. My wife and I  
15     were in Washington, D.C., for a couple of years after both of  
16     us were out of graduate school. I worked for DC's Mayor Tony  
17     Williams.

18               And then my wife took us up to the University of  
19     Minnesota where she actually -- she knew she wanted to have a  
20     career in academia. So I worked for an urban policy coalition  
21     there, did some consulting work, and then started my Ph.D.  
22     also at the University of Minnesota.

23     Q. Is your -- your wife, is she a Michigander, as well? Is  
24     she from Flint? What's her story?

25     A. My wife's name is Carrie. So we're still married. We

March 28, 2022

1449

1        were married in November of 1999. She was originally from Bay  
2        City, so she was at Bay City Central. We don't think we ever  
3        crossed paths while we were in high school, but we were in the  
4        same James Madison College of Michigan State.

5                  And were kind of together through graduate school.

6        And she's now a full professor of political science at Albion  
7        College.

8        Q.      And your wife, you and your wife, y'all have children; is  
9        that correct?

10      A.     Yes, we do. We have two sons. One who's actually  
11       somewhere not too far from here. He's an undergraduate at the  
12       University of Michigan in the history department. And our  
13       younger son is a junior in high school.

14      Q.     So everybody here knows you were the mayor of Flint.  
15       There's no surprise. How did that happen? How did you come to  
16       be the mayor of Flint?

17                  Please tell us that story.

18      A.     Okay. Long story short, right? Well, I always -- I  
19       always had this passion for my community. My parents were both  
20       public school teachers. My mother was actually in preschool  
21       education when I was younger, but earned her teaching  
22       certificate.

23                  So we were a family that was involved in the  
24       community. Not a political community -- a political family.  
25       But my parents voted. They were engaged with the news. And

March 28, 2022

1450

1        obviously a lot of time with the schools.

2           So, you know, I was hitting middle and high school  
3 when those most, you know, severe factory closings that most  
4 people know about Flint were hitting. The industrial era.  
5 So, you know, friends and family were affected by all of that.  
6 Of course, it was on the news. And movies were being made.

7           And it just -- it was something that deeply affected  
8 me. Any time I had a chance in a college class to, you know,  
9 read something about Flint or Flint's history. Or even when I  
10 was at the University of Oxford studying history, as I  
11 mentioned, you know, most students are studying things in far  
12 flung parts of the world.

13          And I chose to do my honors -- well, we just called  
14 it a thesis -- on the sit-down strike in Flint, the 1936, 1937  
15 on a series of labor struggles between the nascent UAW and  
16 General Motors, which led to General Motors recognizing the  
17 UAW's ability to collectively bargain for unions.

18          This was the first time that a major U.S. industrial  
19 corporation had agreed to those terms in American history.  
20 And I actually studied on what happened subsequent to that  
21 with local politics.

22          How did General Motors influence change? How did the  
23 united auto workers, in their growing political power, kind  
24 of, exert influence on city decisions on school board  
25 decisions.

March 28, 2022

1451

1           So I just -- I always carried this bit of Flint with  
2 me, you know, wherever I went. And even started a nonprofit  
3 organization called Flint Club.

4           And this is hard to imagine today. But, you know,  
5 before we all had Facebook or spent much time on the internet,  
6 it was a really need idea for a community organization to  
7 actually have a website and to put up stories about what was  
8 going on in the community so that people could be connected.

9           There were a lot of us who had the -- you know, the  
10 fortune to be able to go to college, had careers that took us  
11 to different parts of the country and around the world. So,  
12 you know, I can talk about Flint all day.

13           But that just was always with me. So I was doing  
14 this work professionally. Urban policy work, had worked for  
15 the mayor in D.C. And keeping an eye, being involved, you  
16 know, as much as I could from a distance in Flint.

17           And a lot of my friends and colleagues were starting  
18 to become the ones who were involved in community groups. A  
19 friend who was running a community newspaper doing a lot of  
20 investigative journalism. It just, you know, started to be a  
21 conversation about what was coming next for the city.

22           Our current mayor at the time was quite advanced in  
23 age. He had this, kind of, rough and tumble sort of approach.  
24 And a lot of us thought that that wasn't probably going to be  
25 the future for Flint, that we -- we needed something that was

March 28, 2022

1452

1       different than that.

2                   So that planted a seed in me about how could I be  
3 involved in that, what, you know, maybe there was a candidate,  
4 someone on city council who might want to run for mayor. Just  
5 one thing led to another in those conversations, and it didn't  
6 really look like anyone who was within my network who I had  
7 been working with or certainly some others, you know, now that  
8 I look back on who also ran in 2007.

9                   But it was something that I reflected on, prayed  
10 upon. And, ultimately -- and so we were living in Minnesota  
11 at the time, had actually just bought our first house. You  
12 know, my wife was in her Ph.D. program. Really felt like  
13 that's what I needed to do.

14                  That, you know, I was doing this work in other parts  
15 of the country. I was doing it in Minnesota. I really should  
16 go home and do this work.

17 Q. And when you first ran in 2007, you ran against the mayor  
18 that you just described.

19                  What was his name?

20 A. Mayor Don Williamson.

21 Q. And you lost, right?

22 A. Yes.

23 Q. And I don't mean to say that flippantly. It probably  
24 wasn't a fun experience. But you move back to Flint with your  
25 family, decided to run against mayor Williamson.

March 28, 2022

1453

1           And you did not get elected, correct?

2       A. I didn't. So we have this system in Flint where you run a  
3       big open nonpartisan primary. I mean, many of us have party  
4       affiliations, but that's not on the ballot. So the top two  
5       vote-getters in the August primary advance to the general  
6       election.

7           So I was able to come in second in the primary of  
8       August. So that's 2007. We had moved back home in May of  
9       2006. And was very proud of that success. I felt like as  
10      someone whose first time running for office, you know, young  
11      person had been able to raise money.

12           And literally knock on thousands and thousands of  
13      doors myself. Not my campaign. Although they would have done  
14      many more.

15           So, you know, the fall was just a blur. It was a  
16      really tough -- politics in Flint are really tough. Every  
17      election is really tough. So put everything I had into it. I  
18      thought I was going to win. I think when you ask most first  
19      time candidates if they think they're going to win their  
20      election, they'll tell you yes.

21           We were in striking distance. I mean, we knew enough  
22      to know that it was going to be close.

23           Over 20,000 people cast their ballots in that  
24      election, a pretty big turnout for a Flint mayoral off-year  
25      election. It wasn't with the governor's race or presidential

March 28, 2022

1454

1        election. Came up 581 votes short.

2        Q. Still remember that, huh?

3        A. Oh, yeah. That's the number. 581. So that was how many  
4        doors I didn't get to. Or maybe double that number, I would  
5        have had to talk to, to convince them to vote for me instead of  
6        the other guy, yeah.

7        Q. And then at some point within the year or two, the mayor  
8        who luckily somehow beat you, despite all your door knocking,  
9        he resigned; is that correct?

10      A. He did. As I said, it's always -- it's always tough in  
11       Flint. But it's really tough in Flint during a Great  
12       Recession. And you know, I never had a chance to talk to the  
13       now late -- may he rest in peace, Mayor Williamson about his  
14       decision.

15                  He publicly said he was retiring. This was in early  
16       2009. He did also happen to be facing a recall election. So  
17       recall elections in Michigan at that time were structured  
18       differently than they are now.

19                  Our former mayor before Mayor Williamson had been  
20       removed from office by recall. So it was my belief that he  
21       would have lost that recall election. But about a month or, I  
22       don't know, six weeks before that election, he retired from  
23       office.

24      Q. So you run in a special election.

25                  Was it 2009?

March 28, 2022

1455

1     A. Yes. And because it was special, we had our -- we had our  
2 primary in May and our general in August.

3     Q. So very quick turnaround this time around, right?

4     A. Yes.

5     Q. And you -- unlike the first time when you ran, this second  
6 time you were elected, correct?

7     A. Yes. I was elected August 2009.

8     Q. So everybody in the room for the last four weeks or five  
9 weeks, all we've been talking about is water. Everything is  
10 about water. But I imagine that when you step in as mayor to a  
11 city as big or as small as Flint, your responsibilities are  
12 inclusive of issues with water but also pertain to other  
13 things; is that true?

14     A. Yes.

15     Q. So aside from everything that everyone in here has talked  
16 about, what was the day-to-day like? What were your  
17 responsibilities as mayor, and what was it that was essentially  
18 required of you in those moments?

19                          That was a long question. I can chop it --

20     A. No, no. It's a tough job. There's a lot to it. I'll try  
21 to be brief valuing the Court and the jury's time.

22                          It really has to be one of the most difficult jobs in  
23 American government. I mean, this is a city that has lost  
24 population, has lost tax base. But is also an extremely, you  
25 know, proud and tough and beautiful community. So you don't

March 28, 2022

1456

1       go into that job with low expectations just because it's  
2       tough.

3           And I was listening to -- you know, to voters, to  
4       citizens throughout these conversations. I said over and over  
5       again that we were going to make Flint into a, you know,  
6       sustainable 21st century city with new jobs and safe  
7       neighborhoods and good schools. And went in trying to kind of  
8       focus on all those things.

9           So people expected in addition to that, all the basic  
10      services. I mean, that includes water. We had been receiving  
11      water from a long time from Detroit. But we were no longer  
12      under a long-term contract. So that was an issue that was  
13      discussed.

14           We, you know, have to figure out how to mow the  
15      parks. And depending on the communities you all come from,  
16      you may take it for granted that someone mows the parks every  
17      week. We in Flint at that time would have a hard time trying  
18      to figure out how to mow the parks once a month.

19           And that's not something you're proud of as a mayor.  
20      That's not something you want to see when you drive down the  
21      street.

22           So we have abandoned houses that need to be  
23      demolished that need to be boarded up. You know, the work to  
24      attract new companies, support our existing small businesses.  
25      Because people ultimately, you know, want to go to work and be

March 28, 2022

1457

1       able to pay bills and raise their family.

2                     And then, you know, at that time because of the  
3                     severity of the Great Recession and the kind of desperation  
4                     that that was setting in for a lot of families, the challenges  
5                     around public safety were really severe in Flint.

6                     You know, you go into it without the resources you  
7                     want, but you have to manage them. I'm thinking like a mayor  
8                     here when I say that.

9                     We had in 2010, the still to this day, you know,  
10                    highest number of homicides that the city has ever recorded in  
11                    a single year. And that included an episode with someone who  
12                    became known as the serial stabber. We had a series of  
13                    murders by knife during that summer of 2010.

14                    We had a couple of strings of dozens, if not,  
15                    hundreds of arsons. It just -- we can have this conversation  
16                    for a long time. But I'm trying to just hit on a few -- these  
17                    were the things that were on, you know, my desk and my  
18                    department head's desk every day.

19                    MR. STERN: So it sounds like you're talking about  
20                    parks and recreation, right, when it comes to mowing the lawn;  
21                    is that fair.

22                    A. Yes.

23                    Q. You're talking about the police department and emergency  
24                    services, right?

25                    A. Yes.

March 28, 2022

1458

1       Q. You're talking about the fire department for the -- at  
2 least for the arsons and for other issues that may turn up,  
3 right?

4       A. Yes.

5       Q. You're dealing with budgets, you're dealing with tax  
6 collection.

7                   All those things, correct?

8       A. Yes.

9       Q. Now, everybody in the world is from somewhere. You know,  
10 you've already kind of -- it permeates through you about your  
11 feelings about Flint.

12                  But for people who are not from Flint, whether  
13 they're from Ann Arbor or from Saginaw or somewhere else in  
14 Michigan or from Georgia or from New York or from Boston,  
15 wherever someone's from, if you were to describe to people and  
16 to this jury, what does it mean from your perspective as  
17 someone who grew up there, who came back there, who became the  
18 mayor, what does it mean to be from Flint?

19       A. Well, we're -- you know we're proud Flintstones. You'll  
20 hear that said. Just -- it's a place where we've taken a lot  
21 of hard knocks, but somehow we -- you know, we find a way. We  
22 pull together. You know, we stick together we work things out.

23                  It's not always a pretty situation. It's not always  
24 a pleasant dialogue. But you have to be able to have those  
25 conversations with people. So I think it's a place where, you

March 28, 2022

1459

1 know, you can go to the bank, and you'll end up striking up a  
2 conversation with somebody about their life story.

3 And you'll end up sharing your life story, even  
4 though you didn't intend to have that conversation when you  
5 were -- when you were there.

6 So it's a kind of a family. It's a rough family  
7 sometimes. But people do really care for one another. We've  
8 been through these hard knocks, and I think we're just -- you  
9 know, we're really proud of how the community somehow finds a  
10 way to beat the odds.

11 That's kind of what you're trying to do in Flint.  
12 You're always trying to figure out how you can beat those odds  
13 that are stacked against you.

14 Q. So we're going to get through a lot of history of the  
15 river and the water and the KWA stuff that we've been talking  
16 about in here.

17 But at some point in time -- and we'll go through it  
18 in more detail -- but you finished being mayor around 2015,  
19 right after a reelection; is that correct?

20 A. Finished is a great way to put it. I lost what would have  
21 been my second reelection in November of 2015. So then  
22 Dr. Karen Weaver, Mayor Dr. Karen Weaver took office just a  
23 couple of days after that election, so.

24 Q. And what is interesting or maybe tell the jury is there's  
25 a whole water crisis. You're the mayor in the middle of it.

March 28, 2022

1460

1       We'll talk about all of that. But you lose your reelection.

2                  You could have left, right?

3       A.    Sure. I mean, yeah, I could have. I mean, I -- we  
4       weren't going to, but...

5       Q.    Did you and your family make a decision at that time about  
6       staying, or was there not even -- what was the decision process  
7       like?

8       A.    It wasn't a discussion. I mean, we weren't ready to go.  
9       The work felt unfinished. I mean, sure, you lose an election.  
10      My parents were just down the street. My grandmother still  
11      just lived just literally outside of the city in a senior  
12      living facility.

13                  So that's where family was. That's where our friends  
14       were. You know, I was still very connected to the life of the  
15       community. It's certainly a different role when you're the  
16       mayor versus not the mayor. But I was still, you know, a part  
17       of the community.

18                  And, frankly, to tell the whole truth here on the  
19       stand, my father was actually in the hospital with what turned  
20       out to be a serious case of pancreatitis. So he was in ICU  
21       those last few days when I was on the campaign trail. And he  
22       passed away in early December just after I was out of office.

23                  So it -- we weren't in the mindset of thinking about,  
24       you know, going somewhere else.

25       Q.    And to this day, you still live in Flint; is that correct?

March 28, 2022

1461

1     A. Yes, yes. We're in the house that we purchased when we  
2 moved back in 2006.

3     Q. I skipped over, like, years of stuff, and we'll get to it.  
4 But you talk about 2009. You were elected in a special  
5 election. We just touched on 2015. You were not reelected.

6                         You were reelected in 2011, correct?

7     A. Yes. So when you win in a special election, you then have  
8 to run in the next regularly scheduled election. So I came in,  
9 in August of 2009 and knew that right around the corner would  
10 be a regular primary election in August of 2011. So that -- so  
11 that, you know, was on the calendar. That was on my schedule  
12 from day one.

13    Q. So you wish that election. And do you recall anything  
14 about that election day or that period of time that stands out  
15 to you different than what you experienced in 2009?

16    A. Yes. Because on election day -- so I took the day off,  
17 because I'm not going to do city business on election day. I'm  
18 going to do Candidate Walling for mayor work. So I'm out in  
19 the neighborhood on the city's south side about 3:00 o'clock in  
20 the afternoon.

21                         And I realize I'm getting a call from Michigan State  
22 Treasurer -- State of Michigan Treasurer Andy Dillon. And we  
23 had been having these conversations and negotiations about  
24 Flint's status under this new Public Act 4, which gave the  
25 state and the governor additional powers in terms of local

March 28, 2022

1462

1 governments and local school districts.

2 So usually, you know, when I'm out campaigning, I  
3 don't take phone calls. The whole purpose is to have  
4 conversations with people who you don't normally talk with.  
5 That's why you take time to go out to a neighborhood.

6 But because it was Treasurer Dillon and because there  
7 were these ongoing issues in terms of the city status, Public  
8 Act 4, the financial review that had been underway, I took the  
9 call. So I got back into the car.

10 And Treasurer Dillon told me that at about  
11 5:00 o'clock, Governor Snyder would be announcing that the  
12 City of Flint would be declared to be in a financial  
13 emergency.

14 And at some point subsequent to that, an emergency  
15 manager would be appointed. So that was my, like, you know,  
16 three O something on election day. And this new Public Act 4,  
17 of course, which I had followed very closely, said that an  
18 appointed emergency manager will act as the mayor and the city  
19 council.

20 So it was devastating news to get on election day. I  
21 believed very strongly that I was going to win. You know,  
22 people still have to have their say, votes still have to be  
23 counted.

24 But I had to go into a different mode of thinking  
25 about what might I say as a person getting elected to an

March 28, 2022

1463

1        office when I understand the governor is going to appoint  
2        someone to take all of that authority.

3                And it's just -- in many different ways as a mayor,  
4        you're kind of in this, you know, balancing act or trying to  
5        contend with different and conflicting interests.

6                So, yeah, my election night speech ended up being a  
7        -- very different kind of remarks. Because that did hit the  
8        news at 5:00 o'clock. So the governor made this announcement.  
9        The community's concerned about losing democracy and what's  
10      this going to mean?

11               You may know, but City of Flint tends to be about  
12      90-some percent democratic community. Governor Snyder was  
13      elected as a republican. So you had a republican governor  
14      making this announcement about an emergency manager. You had  
15      a local community that has an awful lot of disagreements with  
16      that kind of approach.

17               So I ended up coming up with a vision, a statement  
18      that was along the lines of, you know, I'm going to work with  
19      anyone who's here to cooperate to make Flint a better place.

20               I wanted to -- I didn't want to go into this term  
21      with just a pitched battle, you know, right off the bat  
22      between democrats and republicans or, you know, what have you.  
23      So I wanted to try to create a framework where we could still  
24      deal with these problems, still put the community first.

25               It was a value proposition that anyone who wanted to

March 28, 2022

1464

1       do this work, even if I vehemently disagreed with Public Act  
2       4, which people of Michigan repealed about a year later, or  
3       disagreed with a certain individual or an individual, a  
4       governor who was appointed by that individual, that we had to  
5       somehow sort of work through this.

6       Q. You've mentioned a few times the Great Recession, and you  
7       talked about, I think, family members of yours who -- or  
8       community that you were aware of that worked in the automotive  
9       industry.

10           At some point in time through your education, through  
11       your study, through your work, did you become familiar with  
12       the history of Flint?

13       A. Yes. Especially the social and economic history,  
14       political.

15       Q. So throughout your testimony, I'm going to ask you about a  
16       few things. One is Flint itself, and we've already sort of  
17       gone down that road some. Two is the Flint Water Treatment  
18       Plant.

19           Three are some of the players in Flint, some of the  
20       names of folks that the jury's heard about that we've talked  
21       about. We're going to talk about Flint's engineering  
22       consultants. And ultimately we're going to talk a little about  
23       the crisis; is that fair?

24       A. Yes.

25           MR. STERN: Marcus, were you about to say something?

March 28, 2022

1465

1                   MR. CHRISTIAN: Yes. Your Honor, I understand there  
2 are going to be a number of slides during the -- during this  
3 testimony. I understand they're not marked for  
4 identification.

5                   THE COURT: We'll mark them after. That's what we've  
6 been doing all along. So we'll continue to do what we've been  
7 doing. Thank you.

8                   MR. STERN: Anything else? May I proceed?

9                   Thanks.

10 BY MR. STERN:

11 Q. Sorry.

12                   So if you don't mind, since you have some working  
13 history of Flint, I talked to the jury some in the opening  
14 statement about the history of Flint.

15                   I'm curious if you have any familiarity with the auto  
16 industry when it came to Flint and sort of the story of how  
17 that all happened and when it did?

18 A. Yes. So I have a long bit of history that maybe hadn't  
19 come up yet. Because you probably know Flint as the vehicle  
20 city. But you may not remember -- of course, we have the motor  
21 city in Detroit. Flint's the Vehicle City.

22                   Flint got the moniker "Vehicle City" actually for not  
23 producing cars but for producing carriages. So before we had,  
24 you know, automobiles like we think of today we had horse-drawn  
25 carriages.

March 28, 2022

1466

1           And it was in Flint where early companies that turned  
2 into our auto industry, actually Buick, for instance, started  
3 making carriages and sold more carriages than any other  
4 company in the world in 1905 or 1906. And that's when we  
5 actually became the Vehicle City.

6           So it was then from that then, there were, of course,  
7 investments and new technologies and people like Charles  
8 Stewart Mott, which bequeathed later the Charles Stewart Mott  
9 Foundation, moved his axle company from upstate New York to  
10 Michigan to be a part of what became General Motors.

11           So companies like, you know, Chevrolet and Buick and  
12 later, you know, what Oldsmobile in Lansing and others were  
13 part of, you know, what then became the world's largest  
14 corporation in the 20th century.

15           So like today, we think about, you know, Amazon or we  
16 think about Microsoft, that was General Motors in the 20th  
17 century. And Buick's world headquarters was in Flint. We  
18 had, you know, a couple of handfuls of factories ultimately  
19 employing tens of thousands of people. This really was the  
20 life of the community.

21           It was the auto industry and then all of the  
22 community institutions that came around that.

23 Q. So between 1900 and 1920s, do you have any concept or idea  
24 of what happened with the population in Flint?

25 A. Well, it was absolute boom. This is the first major wave

March 28, 2022

1467

1      of population growth. People were moving from around the  
2      country into Flint. Some international immigration, as well.  
3      But a lot of the people coming to Flint were from different  
4      parts of the country.

5                And this picture shows just how crowded everything  
6      was. Because people were rushing to get these, you know, these  
7      pretty good paying jobs relatively.

8                So you'll see in Flint's history, this idea of, like,  
9      a hotbed which meant that one person slept in the bed and then  
10     woke up and went to work. And before the bed cooled off, the  
11     next person coming home from work would be sleeping in that  
12     same bed. And that just, you know, that went on for years.

13               This was, you know, part of our country's great  
14      economic boom early in the 20th century, the second Industrial  
15      Revolution.

16      Q. Do you know if -- do you know what Flint's population was  
17      by the 1960s?

18      A. Yeah. Well, through the '60s, you take a census every ten  
19      years, so I think the 1970 census put us 198,000. We say  
20      200,000, you know, the city's peak population was 200,000 on a  
21      late '60s, right around that 1970. So that was our -- that has  
22      been our historical peak so far.

23      Q. And in that period of time, if you know, what was the --  
24      what was the perception of and how far reaching were companies  
25      like GM, as well as the United Auto Workers Union in Flint?

March 28, 2022

1468

1       A. Well, as I said, the community really revolved around the  
2 auto industry. We had at our peak, I think we had almost, you  
3 know, 11 or 12 production factory facilities, and these are the  
4 big job generators. These are the thousands and thousands of  
5 people working the line.

6                  The Buick city complex along the river on the  
7 northeast side, it was the largest UAW local in the world. It  
8 alone -- it alone had like 35,000 members at its peak. The  
9 largest nonmilitary cafeteria in the world. I mean, it was  
10 just -- at the time, it was just an enormous part of our  
11 community.

12                 You'll see estimates. The auto industry can add  
13 people and lay people off and change jobs pretty quickly. But  
14 you'll see 75,000, 80,000, maybe even 85,000 workers in  
15 Flint's auto plants at its peak.

16                 Not all of those would have been Flint's residents.  
17 They would be starting to drive in from surrounding  
18 communities. But the property tax base, the -- just all the  
19 income and spending that goes with those kinds of jobs.

20                 It's -- this is what made Flint such a, you know,  
21 prosperous place. It really put Flint on the map.

22 Q. So you mentioned that at the -- I think you said in the  
23 1970 census looking backwards at the '60s, the --

24                 THE COURT: Mr. Stern.

25                 MR. STERN: Yes, ma'am.

March 28, 2022

1469

1           THE COURT: I think we need a break.

2           MR. STERN: I'm so sorry.

3           THE COURT: That's all right. I just got a signal  
4 over here from a juror that it would be a good time for a  
5 break.

6           MR. STERN: Okay. I'll go back to that question.

7           THE COURT: Okay. Yeah.

8           THE CLERK: All rise.

9           THE COURT: We'll take about 15 minutes. And,  
10 Mr. Walling, you're free to step down or sit there, whatever  
11 you wish.

12           THE WITNESS: Okay. Thank you, Your Honor.

13           THE COURT: Mr. Walling, just be sure to stay on the  
14 first floor and not.

15           MR. STERN: Can I ask the. I have not seen the mayor  
16 this morning at the courthouse. I don't know where he's been.  
17 There's a witness room, but I don't -- we don't use it. I  
18 don't know if any of the defendants are using it.

19           But I'm curious if it's possible for him to use that  
20 room while we're on a break.

21           THE COURT: Sure.

22           MR. ERICKSON: We're not using it today.

23           THE COURT: Okay. Yeah.

24           MR. STERN: So if you go out the hallway,  
25 Mayor Walling, on your left-hand side, there should be a room

March 28, 2022

1470

1       to go in. But we're not allowed to talk to. So I don't want  
2 you to feel compelled to have to.

3             THE WITNESS: Thank you. Otherwise I had just been  
4 in the hallway.

5             MR. STERN: No problem.

6             THE COURT: Okay. Good.

7             MR. CHRISTIAN: And, Your Honor, before the jury  
8 comes back after break, we'd like to have a moment to discuss  
9 an issue.

10          THE COURT: Before the --

11          MR. CHRISTIAN: Before the jury comes back.

12          THE COURT: Well, what is the issue?

13          MR. CHRISTIAN: This is fascinating testimony. I  
14 think it's a little bit outside of relevance.

15          THE COURT: Mr. Christian, you were here during the  
16 opening, right?

17          MR. CHRISTIAN: Yes, Your Honor.

18          THE COURT: And Mr. Stern went through this  
19 history --

20          MR. CHRISTIAN: Yes, he did.

21          THE COURT: -- as part. And so an opening statement  
22 foreshadows the testimony that you're going to have to support  
23 that opening statement.

24          MR. CHRISTIAN: I understand, Your Honor. And that's  
25 why I did not object in front of the jury. I didn't want to

March 28, 2022

1471

1       be obstructive. But I just -- you know, given -- some of it  
2       seems to be a little bit afield. But if you disagree, I just  
3       wanted to raise the issue, Your Honor.

4           THE COURT: I disagree only because I listened to the  
5       opening statement, and I saw how it was connected to what  
6       happened to the City of Flint that landed it where it was.  
7       But I think the point of which you would have wanted to object  
8       would be earlier.

9           I mean, you saw the PowerPoint from the opening. It  
10      had this progression.

11           So I assume, Mr. Stern, that this is what this  
12      testimony is doing, is supporting those statements you made in  
13      your opening?

14           MR. STERN: Of course. I mean, he hasn't heard the  
15      opening. But even if he had, I wouldn't just ask him, "Hey,  
16      did anything I say in opening not ring true?"

17           THE COURT: Right.

18           MR. STERN: So I have to get the testimony from  
19      somebody. And he's the person that knows best because of his  
20      studies, being the mayor, and he's just somebody that knows  
21      it. He's from there.

22           THE COURT: Okay. Yeah. Well, thank you for your  
23      objection, and it's overruled.

24           Mr. Mason wants to make the same one. But if he  
25      makes it, you've got to talk into the microphone.

March 28, 2022

1472

1                   MR. MASON: I just --

2                   THE COURT: Just be seated and speak into the  
3 microphone.

4                   MR. MASON: The fact that someone says something in  
5 opening does not make it relevant.

6                   THE COURT: No, it doesn't, Mr. Mason. But listening  
7 to the opening, it was evident what this testimony was going  
8 to provide. I didn't know who would provide the testimony.  
9 But I know it couldn't be Mr. Stern testifying. So it would  
10 have had to be a witness. And it fit into the story that he's  
11 telling that led to the Flint Water Crisis so.

12                  MR. CHRISTIAN: And one other thing, Your Honor, I  
13 just want to point out. Although Mr. Walling -- Mayor Walling  
14 is very credentialed and has historical credentials. He's not  
15 an expert in this case, and he's testifying as an expert.

16                  MR. STERN: No, he's not.

17                  MR. CHRISTIAN: He wasn't around in the '20s.

18                  THE COURT: He's testifying -- he's not giving  
19 opinions. He told us at one point, there were 85,000 people  
20 who worked in Flint water plants at another time, and some  
21 lived in Flint and some did not. I don't see that -- tell me  
22 what opinion testimony you've heard.

23                  MR. CHRISTIAN: Well, I mean, he definitely did not  
24 experience that, Your Honor. He's not a witness who can say  
25 he was there in 1920.

March 28, 2022

1473

1                   THE COURT: Well, that's true.

2                   MR. CHRISTIAN: And hotbeds mean this. And, you  
3 know, the history of the unions and all those sorts of things.  
4 That's more of a historian as an expert would testify to, Your  
5 Honor.

6                   THE COURT: Mr. Stern.

7                   MR. STERN: He was the mayor of Flint. I mean, he  
8 was the mayor for seven or eight years. He grew up in Flint.  
9 He spent his childhood in Flint. He spent his adulthood in  
10 Flint. Spent his professional career in Flint.

11                  You don't have to qualify somebody as an expert for  
12 them to talk about intelligently about where they're from and  
13 their community. All of us can do it without being qualified  
14 as experts.

15                  Totally, totally appropriate for him to give context  
16 to the jury about what lead to decisions that were made in  
17 2013 and '14.

18                  MR. CHRISTIAN: And he was born in 1974 thereabout,  
19 Your Honor. Not 1920.

20                  THE COURT: Okay. How much further -- how much more  
21 of this material do you have?

22                  MR. STERN: Five minutes, ten minutes.

23                  THE COURT: Okay. Well, I'll allow that. I don't --  
24 what we try to stay away from with expert testimony is  
25 opinions. And I don't know how much of Ann Arbor's history I

March 28, 2022

1474

1       could give you. I could -- but probably some. And just from  
2 living here and so on.

3                   So the objection is overruled, and we have about five  
4 more minutes, and we knew this was coming. We didn't know  
5 which witness, but we knew it. And so that will be the  
6 decision there.

7                   So anything else at this time?

8                   MR. CHRISTIAN: Nothing from me, Your Honor.

9                   THE COURT: Okay. Thank you.

10                  (Brief Recess)

11                  THE COURT: Please be seated. Then we'll get the  
12 jury. Please be seated. It's now all of 23 degrees.

13                  MR. STERN: Warming up.

14                  THE COURT: Yeah. It's a heat wave.

15                  MR. MAIMON: Well it's still only March.

16                  THE COURT: Yeah. There's hope.

17                  THE CLERK: All rise for the jury.

18                  (Jury In)

19                  THE COURT: It got cooler in here. Yeah. It was so  
20 warm for several weeks, and now there's a little breeze. So  
21 please be seated.

22                  Mr. Walling, you're still under oath to tell the  
23 truth from when I swore you in earlier.

24                  THE WITNESS: Yes.

25                  THE COURT: Good.

March 28, 2022

1475

1                   MR. STERN: May I proceed?

2                   THE COURT: Yes.

3 BY MR. STERN:

4 Q. Mr. Walling, you mentioned that at its peak, the city had  
5 roughly 190-some-odd-thousand residents.

6                   And then at some point in time did that change?

7 A. Yes. It declined over time in those coming years. So,  
8 you know, each census would show some decline in population.

9                   We did the -- we did the city's long-term  
10 comprehensive or master plan while I was in office. This is  
11 something that we took a look at. The 2010 was also conducted  
12 while I was in office. So we came out 102,000-something in  
13 the 2010 census.

14                   So we were using that data in our planning, you know,  
15 process to look at those changes over time. I believe the  
16 city had some potential where it could grow a bit. It could  
17 also continue to see some population declines as people lived  
18 in other parts of, you know, Genesee County so.

19 Q. You had mentioned earlier when you were talking about the  
20 Great Recession, and I think you were talking about in 2007; is  
21 that right?

22 A. Great Recession, 2000 -- 2009 is when it technically  
23 started.

24 Q. Was there -- were there other recessions that affected  
25 Flint prior to 2009 that you're aware of?

March 28, 2022

1476

1     A. Well, yeah. I don't know the dates. But I'm sure, you  
2     know, each of those -- any time you have a national economic  
3     slowdown that affects the auto industry, which is what we're  
4     still heavily dependent on. And maybe the Great Recession was  
5     recorded at the start of -- may have started 2008.

6     Q. Okay.

7     A. But right in that time period.

8     Q. So you just mentioned that, you know, '80s, '90s -- by  
9     2010, I think you said the population was around a hundred  
10 thousand people, was that accurate, in Flint?

11    A. Yes. So approximately half of our peak population.

12    Q. Do you know in 2014 at the time that the city switched  
13 from the Lake Huron water to the Flint River, do you have any  
14 idea of what the population was then?

15    A. Yes. We were -- we would be using the U.S. census.

16    There's an American community survey that the Census Bureau  
17 conducts that uses survey data as opposed to, you know,  
18 conducting an actual count of every household.

19                 And I believe that had us at 96 or 97,000. So there  
20 had been a loss of a few thousand people since the 2010 census  
21 count.

22    Q. And sitting here today, do you know what the population is  
23 of Flint?

24    A. On the 2020 census, I think shows us at 85,000. It's in  
25 that neighborhood. I think most large cities believe that the

March 28, 2022

1477

1      pandemic and everything that went along with that, we probably  
2      had an undercount. So there's probably more than that number  
3      of people actually residing in the City of Flint today.

4                So somewhere between 85- and 90,000 people.

5      Q. And in terms of the demographics of the city, do you have  
6      a familiarity with and know today what the minority population  
7      is in Flint?

8      A. Yes. It's -- and all of this would be in the census to be  
9      more precise. But approximately 60 percent minority. For our  
10     community, the African American community is the majority. But  
11     in terms of national comparisons.

12     Q. And was the same true in 2014 in terms of that 60 percent  
13     number as it is today?

14     A. Yes. It would be the same within a few percentages.

15     Q. And then if we're going to talk about poverty, you know,  
16     there's always poverty lines in discussing communities.

17               Do you have any familiarity with what the percentage  
18     of folks in Flint who today live in poverty as well as back in  
19     2014?

20     A. Yes. Our community is about 40 percent of households are  
21     at or below the poverty line. Again, that would vary a bit,  
22     you know, year by year based on conditions. And that means  
23     that about 60 percent of our children are in households that  
24     are at or below the poverty line.

25     Q. We will get into more specifics about the KWA and the

March 28, 2022

1478

1 switch.

2           But as someone who was the mayor for more than half a  
3 decade, grew up in Flint, studied the city, do you have a  
4 familiarity with, let's just say the last 50 years before 2014,  
5 how Flint got its water for its community? And if so, can you  
6 explain it to the jury?

7 A. Yes. It's pretty straightforward. That in the '60s, the  
8 city joined the Detroit Water and Sewerage District. So we  
9 were receiving, you know, treated water from that larger  
10 Detroit system, which was serving Detroit but also many other  
11 communities in the metropolitan area.

12           So that was a long-term contract that we had for many  
13 decades. And then when that -- when the date on that long-term  
14 contract expired 2005, 2006, the city effectively went on a  
15 year-to-year renewal.

16           So if neither party gave a notice, then the provision  
17 of treated water stayed in place. And there was a bit, I  
18 mean, still costly, but a bit of an up-charge for Flint being  
19 a water user without being under a long-term contract.

20 Q. You I believe -- I don't know if this was said in front of  
21 the jury or otherwise.

22           But what year were you born, sir?

23 A. It was accurately stated by the counsel here. I was born  
24 in 1974.

25 Q. Okay. And so from the day you were born until 2014, is it

March 28, 2022

1479

1       -- where was Flint getting its water during that time?

2       A. Yes. It was receiving water from Detroit. So that was  
3           coming into the city and distributed through the miles of pipes  
4           to our households and businesses.

5               And then there would be a brief -- by that I mean a  
6           couple of days at a time, where if the city was unable to  
7           receive water from Detroit, then the city's Water Treatment  
8           Plant was the approved backup. And that would kick in and then  
9           send water into the distribution system.

10              So that had happened actually while the interim  
11           mayor, Mike Brown, who then became later the first emergency  
12           manager. But interim Mayor Mike Brown was in office while I  
13           was running in 2009 for mayor.

14              And the city had a major break this the transmission  
15           line. It's like a 6-foot tall pipe that became not  
16           operational. Took some time to get the equipment and  
17           contractors in place to fix.

18              So there were a few days where that water from the  
19           Water Treatment Plant was flowing into the distribution  
20           system.

21       Q. So when the water came from Detroit, do you have a  
22           familiarity with whether it had been treated before it got to  
23           Flint or if it had to be treated at the plant?

24       A. It was treated. So that was part of the cost that we pay.  
25           There would be other costs we would have of, you know,

March 28, 2022

1480

1        personnel and fixing pipes and things. But our plant was not  
2        treating water on an ongoing basis.

3        Q. And based on your testimony about the 2009 period when you  
4        were running and there was an interim mayor, you said that you  
5        remember an instance where you needed -- the city needed to use  
6        the Flint River on a very temporary basis.

7                  Can you recall any other times from the time you were  
8        born until April 2014 when the City of Flint actually utilized  
9        the Flint Water Treatment Plant and water from the Flint River  
10       to distribute to residents?

11       A. I'm sure there were some just because of the nature of the  
12       system. But that was the one where I had a specific  
13       recollection of them.

14                  Because I was running, the interim mayor was keeping  
15       the two of us who were general election candidates apprised of  
16       some general issues. So that was one where I heard from the  
17       city that, "Okay. This is what's occurring. This is how long  
18       things might take."

19                  It could even maybe have gone on longer. It ended up  
20       being some number a few days.

21       Q. A few days you said?

22       A. Yeah. It may have been a week. But a few days.

23       Q. And the cost of the water from Detroit -- I mean, the  
24       jury's -- I'll represent to you the jury's already heard a good  
25       bit of information about the switch from various witnesses.

March 28, 2022

1481

1           But when you were mayor both on the interim -- on the  
2 -- after the special election and then after you were  
3 reelected, do you have a familiarity with and what was the cost  
4 of the water coming to Flint on a monthly basis?

5 A. Yes. And it would be based on usage. But we would spend  
6 over the course of a year, you know, \$11-some million for that  
7 water from Detroit for the city's portion of the usage.

8           There's a technicality in how this arrangement was  
9 done where the City of Flint actually held the contract with  
10 Detroit for water for Genesee County, through the Genesee  
11 County Drain Commissioner's distribution, as well as the City  
12 of Flint.

13           So that would be another number that would have just  
14 been deducted. Because we would have received that from  
15 Detroit and then that would have been paid by the drain  
16 commissioner for that amount of water.

17           So the City of Flint's portion of the water that came  
18 into our community was around 11 million a year.

19 Q. So just shy of a million a month or so?

20 A. Right. It might be -- it might have been estimated up to  
21 a million a month in, you know, conversations with people. So  
22 right about that, that amount of money.

23 Q. Okay. The jury has heard a good bit of information about  
24 the KWA.

25           When you were elected in 2009, were you aware of any

March 28, 2022

1482

1       conversations that had begun taking place regarding Flint  
2 switching to the KWA pipeline?

3       A. Yes. This was a conversation occurring in the community,  
4 even going back to when I had run in 2007 as a candidate.  
5 Because we were no longer -- we weren't under a long-term  
6 contract with Detroit, so there was an obvious question of what  
7 Flint's long term water source was going to be.

8              Even if it was to resign with the Detroit Water and  
9 Sewerage system, then if that was going to be the city's  
10 decision, it would be better to get under a long-term contract  
11 and actually pay that rate. So that would be, you know, one  
12 option.

13              There were people who were older than me who did know  
14 that the city, you know, had used the Flint River as a primary  
15 source prior to using the treated water from Detroit. Our  
16 Water Treatment Plant is right kind of on the banks of the  
17 river on the city's north side. So there were people who  
18 talked about that.

19              So you had Flint River. You had Detroit. And then  
20 you have different versions of how those things could be  
21 arranged. Whether you were independent as a city or whether  
22 you more cooperated with the Genesee County Drain  
23 Commissioner's office.

24              But it was -- yeah, it was an ongoing conversation.  
25 And I as a -- you know, a candidate and then as an elected

March 28, 2022

1483

1 official, I was supportive of this conversation, of seeing  
2 what options the city could have on the table.

3 Q. So when -- I've never been a candidate for anything. But  
4 when people run for office, they usually run on, you know, a  
5 platform or some ideas.

6 Did you run in 2009 on the KWA, that this was  
7 something that you were, "Let's do the KWA"?

8 A. No. But I was in favor when I'd get asked. People knew I  
9 was interested in exploring it. So that's maybe an answer in  
10 the middle. But sometimes you say to somebody, "No, you know,  
11 that's not for me."

12 Sometimes you say, "You know, that's -- yeah, I'm  
13 going to make that a big focus."

14 And other times you say, "Yeah, I think this is  
15 something that we should definitely look at. I know Detroit is  
16 pretty expensive."

17 It makes sense to try to have cooperation amongst our  
18 communities in what we call the I-69 corridor, the east-to-west  
19 relationships out to the thumb. As we had historically been  
20 more oriented north and south in the I-75 corridor with, you  
21 know, the twin cities -- tri cities to the north and then  
22 Pontiac and Detroit to the south.

23 Q. You went back to Minnesota there for a second.

24 A. I know I did. Sorry about that.

25 Q. That's okay.

March 28, 2022

1484

1           When you first -- did you ever have an official role  
2 when it came to investigating the KWA?

3       A. Well, I mean, invest in the sense that, yes, in the sense  
4 that the city -- when I came into office, there was an  
5 opportunity for the city to join a new public authority that  
6 would have the ability under state law to provide water to  
7 communities.

8           So that was something that the drain commissioner,  
9 Drain Commissioner Jeff Wright was especially kind of focused  
10 on. And he clearly had an interest in the City of Flint being  
11 a major partner in that.

12          So this was something that I was expecting that the  
13 city, you know, could be a part of. And under a normal, not  
14 emergency manager operations, the way the City of Flint takes  
15 official action is the mayor sends a resolution to city  
16 council.

17          And in our case, the mayor does not vote on city  
18 council. So we have nine members who were elected by wards,  
19 and each of them have a vote on those resolutions.

20          So it was always my prerogative, you know, as mayor  
21 to send or not send that resolution to join the KWA to the  
22 city council. I believe that was in the city 's best interest  
23 and did, you know, work with our legal department for that  
24 resolution to go to city council which they then approved.

25          And this is just -- this is the step of the City of

March 28, 2022

1485

1 Flint incorporating the public authority. We're not at the  
2 point yet of water costs or pipeline designs. Those things  
3 were certainly expected to come in the future.

4 This was just a matter of does the City of Flint want  
5 to be an incorporating member of the Karegnondi Water  
6 Authority, the KWA.

7 Q. Was there at some point a committee that was formed with  
8 regard to the KWA that you were a part of?

9 A. Yes. The articles of incorporation that were attached to  
10 that resolution that the city council reviewed laid out the  
11 terms that each community would participate in this public  
12 authority. And there was a five-member incorporating body.  
13 And that's what each incorporating, you know, municipality  
14 would join.

15 So I was -- since we were a city with a strong mayor  
16 form of government, the mayor was to serve as the City of  
17 Flint's representative on the incorporating body of the KWA  
18 authority. I hope that makes sense.

19 Q. It's a mouthful. How many -- and thank you.

20 How many other individuals served on that committee  
21 at the time that it was formed in addition to you on behalf of  
22 the City of Flint?

23 A. So four additional. We were a body of five. You usually  
24 want an even number when you can get it. So we had five  
25 incorporating entities; the City of Flint. The Genesee County

March 28, 2022

1486

1      Drain Commissioner, the County of Lapeer, the City of Lapeer.

2                  And then one county to the east -- and Lapeer's just  
3                  to the east of Flint being here in Ann Arbor. Sanilac County,  
4                  one county to the east on the thumb also joined. So we had  
5                  three counties and two cities.

6    Q. And were you ever -- I believe you were elected at some  
7                  point to be the chairperson or the commission -- what was your  
8                  role on that committee?

9    A. Yes. So like any board, we had elections for officers.  
10                 So I was elected president of the Karegnondi Water Authority.  
11                 And I believe our first meeting, our incorporating meeting and  
12                 the Sanilac County drain commissioner was elected vice chair  
13                 so.

14    Q. And what kind of power did you wield from being the  
15                 president or the chair of this committee?

16                 What was that experience like and what was required  
17                 of you?

18    A. Well our board, one of our first actions was that we  
19                 authorized a position of a CEO to operate the financial and  
20                 day-to-day and administrative functions of the authority.

21                 So those were designated to the CEO's position, which  
22                 was occupied by Genesee County commissioner Jeff Wright. So he  
23                 became the authority CEO.

24                 And our responsibility then was like an oversight  
25                 board that we needed to see annual financial reports. We

March 28, 2022

1487

1       needed to see an audit. We were doing that level of business.

2                   So we had a meeting every -- we had a meeting every  
3                   couple of months. We rotated where that meeting was so that  
4                   we went to different communities for those sessions.

5       Q.   What type -- just for perspective, what time period are we  
6                   talking about right now when it comes to these meetings and  
7                   Jeff Wright being appointed CEO and you being the chair?

8       A.   So we -- KWA was incorporated in fall of 2010. So each of  
9                   our participating communities had to take, you know, our  
10                  action. And then we came together for our first meeting. And  
11                  then that was continuing through 2011.

12                  I mean, the board meetings then continued through  
13                  future years in that same arrangement.

14       Q.   Was the decision made -- strike that.

15                  You just described the process of the -- these  
16                  various counties and cities and your role.

17                  When that coalition came together and you were  
18                  elected the chairperson, had the decision been made at that  
19                  point for Flint to join the KWA?

20       A.   Well, we joined in the sense of we incorporated the  
21                  authority. But there was not yet a decision about actually  
22                  using water that a pipeline that the KWA could build would  
23                  possibly produce.

24                  So first you have to create the entity, which is what  
25                  the City of Flint agreed to. And then there was a process of

March 28, 2022

1488

1       the KWA authority figuring out, "Well, what would it cost for  
2       a pipeline to be built? What kind of terms could communities  
3       choose to purchase water from?"

4       Q. So would it be a fair assessment to say at that point in  
5       time y'all were exploring the opportunity to build the KWA  
6       rather than were committed to it?

7       A. Yes, yes.

8       Q. And early on in your testimony this morning, we talked  
9       about in 2011 you're out knocking on doors and you get a call  
10      from Treasurer Dillon and now there's an emergency manager.

11                  Do you remember who the first emergency manager was  
12      that was appointed in 2011?

13       A. Yes. It was Mike Brown.

14       Q. And prior to his appointment, did you know who emergency  
15      Financial Manager Brown was?

16       A. Yes.

17       Q. And what do you know -- what did you know about him at  
18      that time, and what do you know about him today in terms of his  
19      experience, education, training?

20                  Who is he as a professional?

21       A. So Mike Brown was in that role of interim mayor in the  
22      spring and summer of 2009. He came to that position by being  
23      appointed city administrator by former Mayor Don Williamson.

24                  So under our charter, when a mayor's office becomes  
25      vacant, the city administrator becomes interim mayor. So I

March 28, 2022

1489

1       knew him in that capacity.

2                   At the time he was appointed, he had been serving in  
3                   a facilitator's role for something called the Flint Area  
4                   Reinvestment Office. A number of our local foundations  
5                   created this small team that would hopefully help Flint and  
6                   Genesee County and communities find, especially federal money  
7                   that was coming through.

8                   If you remember the American Recovery Act and the  
9                   stimulus programs under President Obama, those offered a lot  
10                  of different grant opportunities. And Mike Brown's on-the-job  
11                  was to see if projects in Flint could match those different  
12                  opportunities.

13                  We had this road map document that, you know, I was  
14                  aware of, even as a candidate that Mike was facilitating. His  
15                  longer professional career, he had been an executive with the  
16                  Lansing Area United Way. So his work was really around  
17                  nonprofit and community work.

18                  His very first job with the city, I think, was  
19                  running the community development department under another  
20                  former mayor, Mayor Collier.

21                  So sorry for all the timeline, but you see these  
22                  things kind of come back in different ways.

23 Q. Do you know -- do you know -- and in your -- you  
24                  interacted with him on a routine basis when he was emergency  
25                  and previous to is that; is that correct?

March 28, 2022

1490

1     A. Yes.

2     Q. Do you know whether Emergency Manager Brown had any  
3       experience that you were aware of then or now regarding water  
4       chemistry, geology, or water treatment?

5     A. Not that I know of.

6     Q. Okay. At some point after Emergency Manager Brown was  
7       emergency -- Ed Kurtz became emergency; is that right?

8     A. Yes.

9     Q. And do you recall roughly the timeframe of when that  
10      happened?

11    A. I think it -- I think the first transition was spring of  
12      2012?

13    Q. I don't know.

14    A. Yeah. Well, I'm thinking --

15    Q. That's fair if --

16    A. And this may not be relevant. But Mike Brown then moved  
17      to the city administrator's position under appointed manager Ed  
18      Kurtz during the various controversies that were statewide  
19      around this Public Act 4, which had allowed for the appointment  
20      of emergency manager.

21                  There were various court cases that were filed. And  
22      one of the decisions from one of those cases or at least  
23      interim decisions was that Public Act 4 should be put on hold.

24                  And instead the city -- the state's emergency  
25      managers would go back to being administered under what had

March 28, 2022

1491

1 ||| previously been Public Act 72.

2                   And because of that, I understand the department of  
3                   -- the Michigan Department of Treasury didn't believe Mike  
4                   Brown was eligible as an appointed emergency manager. So he  
5                   was then appointed by Mr. Kurtz to be city administrator.

6                   Q. So when Mr. Kurtz comes in, which to the best of your  
7                   recollection was in the summer of 2012, had you ever worked  
8                   with Ed Kurtz in any capacity?

9                   A. I hadn't worked with him. I knew who he was from  
10                  community meetings. He had been appointed the City of Flint's  
11                  emergency financial manager under Public Act 72, like, in 2002.

12                  So -- and he had been a long-time executive with the  
13                  Baker College system. So he was somebody who was prominent in  
14                  our business leadership community.

15                  And while I didn't live in Flint at the time, you  
16                  know, I was certainly following when he was the emergency  
17                  financial manager sometime ago.

18                  Q. I think just so we're not confused, there was an emergency  
19                  financial manager appointed before you came back to Flint,  
20                  right?

21                  A. Had been appointed after a prior mayor had been recalled.

22                  Q. Right. And then that emergency management ended before  
23                  you came back to Flint, right?

24                  A. Yes, yeah. Sorry. It was longer back.

25                  Q. That's okay.

March 28, 2022

1492

1     A. And I know the history is a bit complicated.

2     Q. In terms of Mr. Kurtz, did you know -- do you know,  
3       sitting here today, if then or now he had any experience in  
4       water treatment, water chemistry, or water management prior to  
5       becoming emergency manager in 2012?

6     A. I don't think so. I mean, he served in that role that he  
7       was appointed to. But, you know, again, that kind of covers  
8       everything.

9     Q. After Emergency Manager Kurtz, Emergency Manager Brown  
10      comes back for a short period of time as an emergency manager,  
11      right?

12    A. Yes. As that legal interpretation changes again,  
13      Emergency Manager Mike Brown comes back.

14    Q. And do you know the timeframe when Mr. Brown came back? I  
15      know it's a long time ago but --

16    A. I should. I'm trying to think of whether it was after the  
17      election on Public Act 4 in 2000 -- in 2012 or not. I'm sorry.  
18      Within a few months. It was the end of 2000 --

19    Q. If I represented to you that Mr. Brown was the emergency  
20      manager beginning July of 2013 through October of 2013, do you  
21      have any reason to dispute that that's accurate?

22    A. No. That sounds -- yeah. That five, six-month period  
23      sounds right.

24    Q. I know it's been a lot of years. But just going back to  
25      Emergency Manager Kurtz, if I represent to you that he actually

March 28, 2022

1493

1      became the emergency manager in the summer of 2013 rather than  
2      the spring of 2013, any reason to dispute that?

3      A.    No. And, again, all these things would be clearly  
4      documented.

5      Q.    And then after October 2013, I believe Darnell Earley was  
6      appointed as emergency manager; is that right?

7      A.    Yes. So right. Fall of 2013, yes.

8      Q.    So we've got Mike Brown. We've got Ed Kurtz. We've got  
9      Mike Brown. And then we're back to -- now we're at Darnell  
10     Earley, right?

11     A.    Yes.

12     Q.    And what did you -- did you know Darnell Earley before he  
13     became emergency manager?

14     A.    I had worked with him some. We had a -- we have a group  
15     in Michigan that Michigan State convenes, the Michigan Mayors  
16     Association. And Darnell Earley had been -- was the city  
17     manager for the city of Saginaw.

18                 And the Mayors Association included Saginaw, Flint,  
19                 Detroit, Kalamazoo. And often the mayor in Saginaw, it was a  
20                 different system, not a full-time job. Often City Manager  
21                 Earley would come to those meetings on behalf of the mayor.

22                 And at that time, Mayor Greg Branch from Saginaw and  
23                 the city. So we had been in meetings together.

24                 He had also been interim mayor in Flint years ago,  
25                 around that same time that Ed Kurtz had been emergency

March 28, 2022

1494

1 financial manager. So the now late Mayor Stanley's last city  
2 administrator was Mr. Darnell Earley.

3 Q. And in your interactions with Mr. Earley and in the work  
4 that you may have done with him, were you aware in 2014 or are  
5 you aware now if Mr. Earley has any experience whatsoever  
6 dealing in water chemistry, geology, water management, or water  
7 treatment?

8 A. I don't know about the -- I don't recall any scientific  
9 kind of evidence. He was a city manager for the city of  
10 Saginaw. Saginaw does also provide and supply water to its  
11 community.

12 So when you say "management," you know, he would have  
13 been someone who in a former role, would have, you know,  
14 overseen those operations.

15 Q. Do you know who Warren Green is?

16 A. Yes.

17 Q. Do you see him in the courtroom today?

18 A. Yes. I do now. We had met -- we had seen each other in  
19 the hallway when I had stepped out, too.

20 Q. Could you identify him, just so that we know we're talking  
21 about the same person this the courtroom?

22 A. Yeah. So Warren has the kind of darker blue mask and a  
23 striped tie and a white shirt and a beard underneath the mask.

24 Q. So I'll represent to you that Mr. Green testified for a  
25 few days in this case. He's an engineer. He testified about a

March 28, 2022

1495

1      lot of engineering things. Okay?

2                  Do you know if Mike Brown or Ed Kurtz or Darnell  
3                  Earley were licensed engineers at any point in time when they  
4                  were emergency managers or ever for the City of Flint?

5      A. Not that I know of.

6      Q. Okay. And from the science side, from the chemistry side,  
7                  from the water treatment side, do you know of any  
8                  qualifications that Mr. Brown, Mr. Kurtz, or Mr. Earley had  
9                  related to the treatment of water?

10     A. I don't with Mr. Brown or Mr. Kurtz. Again, they had been  
11        in an appointed role. And then Mr. Earley, by having been in  
12        Saginaw for a longer period of time, his whole career was in  
13        city management.

14                  He may have had more, you know, knowledge of these  
15        things as a manager. But I don't -- I know he didn't have any  
16        -- I'm sure he would have told me. He didn't have any  
17        licenses or training in that area.

18     Q. And then after Mr. Earley was done being emergency  
19        manager, I think it was in January or so of 2015, Jerry Ambrose  
20        becomes emergency manager, correct?

21     A. Yes.

22     Q. And do you remember what the period of time was that Jerry  
23        Ambrose was emergency manager for the City of Flint?

24     A. It was approximately January to the end of April 2015.

25     Q. And then just like I asked you about Mr. Brown, Mr. Kurtz,

March 28, 2022

1496

1       Mr. Earley, when it comes to Mr. Ambrose, do you know whether  
2       he had any training, licensures, or experience in water  
3       treatment, water management, water chemistry, or geology?

4       A. I don't believe he did. He was a professional finance  
5       director. So he had been the City of Lansing's finance  
6       director before actually taking the position under the first  
7       emergency manager Mike Brown to come and be the finance  
8       consultant and then finance director for the City of Flint.

9                   So Mr. Ambrose had been in place throughout this time  
10      period that we're discussing after my second -- during my  
11      second term. So he was a finance director. I don't know of  
12      anything in terms of water treatment.

13       Q. And you mentioned we were talking briefly at the beginning  
14      of your testimony about all the stuff that the mayor has to do  
15      when he's mayor that we've heard about water, and there's more  
16      than just water. You have police and fires and high rate of  
17      homicide.

18                   Is it fair to say that when one of these individuals,  
19      any one of them became emergency manager and undertook the  
20      responsibilities of the mayor and the city council, that they,  
21      too, had to focus on things besides just water?

22       A. Well, yes. The city's operations again were inclusive of  
23      all these different departments. Nearly, you know, I think  
24      \$175 million budget across on all departments and healthcare  
25      benefits and pension liabilities.

March 28, 2022

1497

1           So as a mayor, as a appointed emergency manager who  
2 was acting as a mayor, in fact, acting as a mayor and city  
3 council, then those duties were very broad.

4       Q. Right. So to the extent that anybody has the perception  
5 that between 2011, the first appointment of emergency manager  
6 and when everything happens with regard to the switch, that all  
7 everybody in Flint is talking about and doing and working on is  
8 this switch is the water --

9           MR. CHRISTIAN: Objection, Your Honor. He's  
10           testifying.

11           THE COURT: Do you want to rephrase your question?

12           MR. STERN: I probably should.

13           THE COURT: Okay.

14          BY MR. STERN:

15       Q. Is it fair to say that each of these emergency managers,  
16 when they came into power, were working on things besides  
17 water?

18       A. Yes. Emergency manager, myself, you know, at the time was  
19 working on the whole range. That did include provision of  
20 drinking water. But also even within the water fund, there's  
21 the people, you know, going out and fixing pipes and turning on  
22 and off water.

23           And so even within that, there's a whole range of  
24 responsibilities.

25       Q. And when the first emergency manager, Mr. Brown, was

March 28, 2022

1498

1 appointed in 2011, was he appointed because there was a bad  
2 water situation, or was he appointed because of a financial  
3 situation?

4 A. The public -- the criterion Public Act 4 is a certain kind  
5 of financial emergency. And that's what allowed the governor  
6 to make the declaration in the appointment following the  
7 financial review of the city by the treasurer's office.

8 Q. So it's fair to say it had more to do than just with the  
9 water situation in Flint, correct?

10 A. Well, certainly. At that point, we were all consuming --  
11 you know, Detroit water was coming out of the tap like it had  
12 for all the prior years. And there was a cost issue. There  
13 was a question about long-term supply, so it was something that  
14 had to be focused on and analyzed.

15 But the city's financial distress or emergency under  
16 this particular law is what enabled the governor to legally  
17 make this appointment. I might disagree with that law or  
18 provisions of that law, but that's what occurred.

19 Q. And in terms of cost savings and cuts that the emergency  
20 manager tried to undertake for Flint, were all of those cuts  
21 related solely to water, or were they related to other things,  
22 as well?

23 A. They related to a whole host of things, including on a  
24 personal note, myself and city council losing our compensation  
25 when the emergency manager signed one of its first orders.

March 28, 2022

1499

1       Staff who I had appointed in various roles were removed from  
2       their positions.

3                   And there were many, many subsequent changes.  
4       Privatizing the city's sanitation service. Working to  
5       renegotiate collectively-bargained agreements. That was one of  
6       the strange powers that these emergency managers had is they  
7       could circumvent state laws on collective bargaining.

8                   They just had to consult with unions. They didn't  
9       actually have to negotiate the termination of a contract.

10                  So all of those things were -- I saw those things  
11       occurring at city hall. I continued to, you know, put on a  
12       suit and tie and go into the office and do my job. And within  
13       a period of time -- I don't want to give a false impression --  
14       there was approximately half of my compensation was restored.

15                  But there's a savings right there. And the same had  
16       occurred with city council.

17       Q. And were there cuts made to the police department?

18       A. Ultimately, there were through the various annual budget  
19       cycles.

20       Q. Were there cuts made to the fire department?

21       A. That was a unique case, because we received a federal  
22       grant. One of the grants called a Safer Grant where you have  
23       to preserve a certain level of staffing. And if you do that,  
24       then you can receive additional federally funded staffing.

25                  So I believe our fire department numbers actually

March 28, 2022

1500

1           went up by a few officers, because of the federal funds.

2       Q. And you were there during the period of time you just  
3       described. You put on your suit every day, and you went to  
4       work as you just described.

5           Was it your observation that, at least initially, the  
6       emergency manager was looking at cost savings only for water  
7       or on a larger scale?

8       A. I think it was a comprehensive look. And that does  
9       include the city's water fund. So the emergency manager was  
10      taking up this question of what the city's long-term water  
11      supply was going to be.

12           That was one of ten or 15 things that would come up,  
13       you know, on a regular basis that was being scrutinized. And I  
14       could contribute to some of those conversations, given that I  
15       had been looking at that same question with city council prior  
16       to Mr. Brown's appointment.

17       Q. And I believe you talked earlier about the Flint Water  
18       Treatment Plant. You mentioned it was right on the banks.

19           Do you remember that?

20       A. Yes, sir.

21       Q. Have you spent time in the course of your time in Flint,  
22       either before you were mayor, when you were mayor, or after you  
23       were mayor at the Flint Water Treatment Plant?

24       A. I don't -- I don't think I was ever there before I was in  
25       office. We have Dort Highway, which is a state route, and a

March 28, 2022

1501

1      bicycling trail goes right by the exterior of the treatment  
2      plant. And I was familiar with it just in that kind of way.

3                  As mayor, I was at the facility a handful of times  
4      over my time in office. Maybe not quite once a year.

5      Q. I'd like for you to look on your screen -- I'm about to  
6      show you a picture. I just want to go through a few images of  
7      the Flint Water Treatment Plant. And tell me if you recognize  
8      what you see.

9                  First off, what is this photo?

10     A. Yeah. So this is the -- this is, like, the front of the  
11      building. A walk-in entrance. Small. Small parking lot, so  
12      there's steps. So this would be the place where I would pull  
13      up and then go into the plant.

14     Q. This next picture that I'm going to show you --

15                  MR. STERN: And by the way, that picture, Your Honor,  
16      has been previously marked as Plaintiffs' Exhibit 3619. This  
17      next photo that I'm going to show was previously marked as  
18      also part of Plaintiffs' 3619.

19      BY MR. STERN:

20     Q. And Mayor Walling, do you recognize anyone in this photo,  
21      as well as where this photo may have been taken?

22     A. Yes to both.

23     Q. Okay. So who do you recognize, and where do you believe  
24      this was taken?

25                  And if you want to use the pointer --

March 28, 2022

1502

1                   MR. STERN: May I approach?

2                   THE COURT: Yes.

3                   MR. STERN: Thanks.

4                   THE WITNESS: Okay. Right.

5                   MR. STERN: You don't have to. But if you want to.

6                   THE WITNESS: It's not the kind of thing that I would  
7 do if I were teaching one of my classes. But we'll do the  
8 best we can.

9                   BY MR. STERN:

10                  Q. All right. Go ahead.

11                  A. So go left to right, I think if we're trying to identify  
12 individuals.

13                  Q. Sure.

14                  A. So on the far left is Jason Lorenz. So he acted as the  
15 city's kind of communication point of contact for most of the  
16 time the emergency managers were in place.

17                  I don't -- this individual's face looks familiar but  
18 I don't remember his name. A city employee.

19                  THE COURT: And the record will reflect you're  
20 pointing to somebody with a maroon --

21                  THE WITNESS: Yes.

22                  THE COURT: -- sweatshirt or top?

23                  THE WITNESS: Yes. At the wheel.

24                  Thank you, Your Honor.

25                  Next in the suit in the middle is the city's director

March 28, 2022

1503

1       of public works, Mr. Howard Croft.

2                  Next in the orange sweater is Brent Wright, who was a  
3 long-time city employee supervisor at the water plant.

4                  I don't have a name on this next individual. And  
5 then on the far other side here in the foreground is Flint  
6 City Councilperson Josh Freeman.

7 BY MR. STERN:

8 Q. And this next slide was previously marked as part of 3619.  
9 I believe you've already identified this individual.

10                 But could you tell the jury who this person is?

11 A. Yes. That's the city's director of public works,  
12 Mr. Howard Croft.

13 Q. The next two exhibits were part of 3619.

14                 Do you recognize anything in this photo or have any  
15 recollection of seeing something like this with your own eyes  
16 at some point in time?

17 A. Yes. There are a number of these different, you know,  
18 tanks where it's showing, like, the water is coming into a  
19 stage of the treatment process. So this is inside of the plant  
20 that we saw from the outside.

21 Q. Okay. And this picture, as well, is this depicting the  
22 same thing just from a different angle?

23 A. Yeah. That's a pretty fancy photograph. But, yeah, I  
24 believe that's just the same tank.

25 Q. Okay. This next photo was also marked as part of 3619.

March 28, 2022

1504

1                   Do you recognize anything in this photo where I may  
2 have been taken and if you saw that with your own eyes?

3 A. Yeah. So that's around the same photo where we saw with  
4 the individuals that I pointed out. There were a series of  
5 these basins for this stage in the process.

6 Q. So is this also at the Flint Water Treatment Plant?

7 A. Yes. At the same Water Treatment Plant.

8 Q. Do you know generally a timeframe when these photos may  
9 have been taken in terms of what you're seeing?

10 A. I believe it was sometime in 2015. There were -- I'm  
11 thinking of times when maybe the communications director and a  
12 council person who have had occasion to be there. We had done  
13 an announcement and discussion when the city was responding to  
14 TTHM notice in early of 2015.

15                   And then there was also the time when we were at the  
16 plant for the actual switch off from Detroit. That would have  
17 been in 2014. So without more distinguishing information  
18 here, it was sometime in 2015 or 2014.

19 Q. Or 2014 you said?

20 A. I meant 2014, 2015.

21 Q. Okay. And then this next photo, do you recognize this  
22 photo as something you had seen at the Water Treatment Plant  
23 with your own eyes?

24 A. Yes. This is another stage in that -- in the treatment  
25 process.

March 28, 2022

1505

1       Q. And just like the other photos, your best recollection is  
2       this photo would have been taken either in 2014 or 2015; is  
3       that correct?

4                   MR. ERICKSON: Objection. Lack of foundation. He  
5       clearly doesn't know.

6                   MR. STERN: He actually just testified --

7                   THE COURT: Overruled. I mean, we know what he  
8       knows. We heard his testimony. He doesn't know for certain  
9       the date, but he has a general time period.

10      BY MR. STERN:

11     Q. Do you recall seeing what's depicted in this photo during  
12    that general time period of 2014 to 2015?

13     A. Yes.

14     Q. I'm going to move on to the next photo. Same question.

15                  Does this image depict something that you saw during  
16    the same general time period of 2014 to 2015 at the Flint Water  
17    Treatment Plant?

18     A. It looks like a close-up of that last image. I mean, on  
19    its own, I --

20     Q. Okay. And then this next picture, does that also appear  
21    to be either a close-up of the same image or something that you  
22    would have seen with your own eyes during that general  
23    timeframe at the Flint Water Treatment Plant?

24     A. Again, it is pretty close up. So it's general. But then  
25    that larger tank you showed me, those arms move around, and it

March 28, 2022

1506

1       stirs and mixes the water with whatever this stage of treatment  
2       that's taking place here.

3       Q.     So you sound like you have some familiarity with the  
4       plant. I'm going to ask you in a minute about some of the  
5       other folks in Flint.

6                  But do you have a preference for partial or full  
7       softening?

8                  MR. CHRISTIAN: Objection. Competence.

9                  MR. STERN: No, they're blaming him so he --

10                 THE COURT: We'll just find out if he knows what that  
11       is.

12                 Do you know what "partial" or "full softening" is?

13                 THE WITNESS: I know I've been around discussions of  
14       softening. But I can't sit here today and give you a  
15       description.

16       BY MR. STERN:

17       Q.     Did you ever take any classes on softening or anything  
18       like that?

19       A.     No. I did your basic college chemistry classes, yep.

20                 THE COURT: Well, the objection is sustained. And  
21       we'll move on.

22                 MR. STERN: Okay. Thank you.

23       BY MR. STERN:

24       Q.     Do you have a preference for if you were going to treat  
25       water for a polyphosphate, an orthophosphate, or for just a --

March 28, 2022

1507

1                   MR. CHRISTIAN: Objection.

2                   THE COURT: Just a minute. We'll find out if he has  
3 -- do you know what a polyphosphate, an orthophosphate -- and  
4 what was the third?

5                   MR. STERN: Any just regular old phosphate.

6                   THE COURT: Or just a regular phosphate. Do you know  
7 an understanding of what those are with water treatment?

8                   THE WITNESS: I only know they're different. And I  
9 would have to do some additional reading or looking. I know  
10 they've come up at different times --

11                  THE COURT: Okay.

12                  THE WITNESS: -- in this crisis.

13                  THE COURT: That's sustained then.

14                  MR. STERN: I'll move on.

15 BY MR. STERN:

16 Q. Do you recognize this to be Howard Croft?

17 A. Yes. This is Mr. Howard Croft.

18 Q. And we talked a little bit about what you know about  
19 Mr. Brown, about Mr. Kurtz, about Mr. Earley, and about  
20 Mr. Ambrose.

21                  You interacted with Howard Croft on a regular basis  
22 when you were mayor; is that correct?

23 A. As mayor, yes, yes. It varied at different times. We're  
24 talking about a six-year time period.

25 Q. And do you know -- what do you know about Mr. Croft's

March 28, 2022

1508

1        educational, academic, and work history?

2        A. Well, I got to know Howard Croft when I was first elected.  
3        So this is back in 2009. He actually came into one of my  
4        weekly open office visits. So this was something I committed  
5        to as mayor that my office would be open every Wednesday  
6        morning from, you know, 10:00 to noon unless I was somehow sick  
7        in bed, which I very rarely was as mayor, which I was fortunate  
8        of.

9                  And he came in and was -- he was interested in my  
10          vision of Flint as a more sustainable city. At the time, he  
11          was running a solar panel installation company. Had moved  
12          back up to the area, I think after some time out of Michigan.

13                  He had been an electrical engineer for General  
14          Motors. I know we both went to the same high school Flint  
15          Central. He's older than I am. But we shared a couple of  
16          stories about Flint Central.

17                  And then, you know, he was involved as a small  
18          businessman in the city's work around sustainability. We  
19          ended up convening some sessions with the chamber, talking  
20          about chamber of commerce.

21                  How could the city and its business be more  
22          efficient. How could we attract new businesses that were in  
23          this on a green economy. So Howard Croft was somebody who  
24          would come participate in those.

25                  And then he was appointed -- the first position, I

March 28, 2022

1509

1 believe, was called the director of infrastructure and  
2 development. That's what Emergency Manager Mike Brown  
3 appointed him as soon after Mr. Brown became emergency  
4 manager.

5 Q. You said -- I think you said y'all went to high school  
6 together; is that right?

7 A. No. Just went to the same high school. So we had some  
8 friends of friends.

9 Q. Do you know if Mr. Croft went to college?

10 A. I don't recall.

11 Q. Do you know what, if any, experience Mr. Croft had during  
12 the period of time that you were mayor when it came to water  
13 chemistry, geology, or water treatment from the science side of  
14 things?

15 A. I don't believe he did. As someone in that role, it's --  
16 I mean, someone could have technical knowledge. But it's -- he  
17 acted more as a facilitator working with other city staff,  
18 working with the finance department, the personnel department.

19 Q. We talked for a good bit about all the different things  
20 that the mayor had to do and that EM had to do when he took on  
21 that role.

22 Howard Croft's role as director of public works, was  
23 it exclusive to the water system or was it inclusive of other  
24 things? And if so, what were they?

25 A. It was a broad role. When he was first appointed under

March 28, 2022

1510

1       the title of infrastructure and development, infrastructure  
2 related to what most of us would think of as public works. So  
3 streets, you know, street repairs, street maintenance. So that  
4 was transportation.

5           And then the city had three basic water operations.  
6 So we have drinking water. We have the sewer system, which is  
7 both a storm sewer system and then a separate set of pipes for  
8 the sanitary. Kind of things down the sink and in the shower  
9 sewer system.

10          And then there are the crews that go out and do the  
11 actual, you know, you're moving in, you need somebody to turn  
12 on the water. So each of those things were a unit of city  
13 government.

14          So Mr. Croft was responsible for those. But then  
15 what was called development at the time was the building and  
16 safety division, the inspectors who would go out and look at,  
17 you know, look at furnaces and look at roofs and look at  
18 building plans.

19           It included the zoning board, the planning  
20 commission. And it also included the management of all these  
21 different federal grants that were coming like the community  
22 development block grant that City of Flint received a few  
23 million dollars every year. It could be used for a variety of  
24 purposes. So it was very broad.

25           Now, later in Mr. Croft's tenure, we had a

March 28, 2022

1511

1 professional urban planner who became the director of planning  
2 and development.

3 And then Mr. Croft was then director of public works  
4 and was focused on the utilities, the streets, and initially I  
5 think he also had parks actually in infrastructure and  
6 development. So those issues around, kind of, park  
7 maintenance and tree maintenance were also part of his brief  
8 initially.

9 Q. Okay. Do you recognize Mike Glasgow from this picture,  
10 and do you know who Mike Glasgow is?

11 A. Yes. I know Mike Glasgow. He was a long-time City of  
12 Flint employee. And when I was -- earlier in my time, he was  
13 the -- as mayor -- he was the city's, like, lab tech or lab  
14 supervisor.

15 Q. So what does that mean, and how did you experience that?

16 A. Well, like, I went on a tour of the waste water treatment  
17 plant, which we haven't looked at. So a different physical  
18 location than the water plant.

19 And Mike Glasgow was there in what looked like a  
20 really advanced, you know, chemistry lab with test tubes and  
21 different kinds of equipment. And I remember -- that may have  
22 been the first time that we actually met at least in the city  
23 setting. Maybe we had bumped into each other in the community.

24 So he was -- that was his role. So he was in the  
25 city's water technicians lab, and that was physically located

March 28, 2022

1512

1       at the waste water treatment plant.

2       Q. And so are you referring to a period of time, I think you  
3       said when you were mayor --

4       A. Yeah. I meant when -- before the emergency managers. I  
5       would have gone on a tour of the facility either in 2009 or  
6       maybe early 2010.

7       Q. Do you know if prior to the water switch in 2014 if Mike  
8       Glasgow had any experience running or operating a full-time  
9       water treatment facility?

10      A. Not that I know of. For all of our City of Flint  
11       employees and for our long-time employees, the plant, you know,  
12       it didn't run as a full-time, full-service plant. It ran as a  
13       backup like I described. So it had to do certain things  
14       throughout a year.

15                  And then it would run for a certain period of time  
16       for that water to be tested and just dropped, I think, just  
17       back into the river actually.

18                  So Mike may have had some involvement with that kind  
19       of process.

20      Q. Do you know if at some point in time Mr. Glasgow obtained  
21       an F1 license?

22                  Are you familiar at all with that?

23      A. I know the city needed to have an F1 license. But  
24       figuring out who would have it or whether it could be a  
25       consultant or an employee, I don't remember the specifics of

March 28, 2022

1513

1      Mr. Glasgow in that regard.

2      Q.    Okay. I want to move on to do you recognize this as Brent  
3           Wright?

4      A.    Yes.

5      Q.    And at some point in time when you were the mayor or the  
6           city was under emergency management, was Brent Wright the water  
7           plant superintendant?

8      A.    Yes. I think I said "supervisor" earlier when I pointed  
9           him out. But he was the most senior staff at that physical  
10          water plant building that you showed me a picture of before.

11           So if I went as a mayor to a walkthrough the Flint  
12          Water Plant, then Brent Wright would -- you know, would do most  
13          of that tour. You know, he had an office at the water plant.

14      Q.    Do you know if, sitting here today, if Brent Wright had  
15          ever obtained an F1 license?

16           MR. CHRISTIAN: Objection. Asked and answered.

17           THE COURT: I think -- overruled. I think it was  
18          Glasgow.

19           THE WITNESS: I don't recall specifically about  
20          Mr. Wright. I mean, it would surely be part of the city's  
21          personnel records.

22          BY MR. STERN:

23      Q.    Do you know if Mr. Wright, prior to the water switch in  
24          April of 2014, had ever operated a Water Treatment Plant that  
25          was full-time operational treating water?

March 28, 2022

1514

1     A. You know, again, I don't know his whole employment history  
2     for the time he would have been at the City of Flint, which I  
3     know was a good number of years. That's -- our plant never  
4     operated that way.

5     Q. So no?

6     A. Not that I know of.

7     Q. And then I want to move on, if you don't mind, to  
8     Daugherty Johnson, who's been affectionately referred to or  
9     unaffectionately referred to as "Duffy," I guess, depending on  
10    who says his name.

11               At some point in time while under emergency  
12    management or while you were the mayor, did Duffy Johnson serve  
13    as the utility director for the City of Flint?

14     A. Yes. And he generally did go by Duffy. That's how most  
15    people would know him.

16     Q. Do you know what -- prior to the switch in 2014 to the  
17    Flint River, do you know what Mr. Johnson's experience was in  
18    water treatment?

19     A. I don't. I know he was at the waste water treatment plant  
20    when he was elevated to this position. So this was, again, as  
21    I would go to a waste water treatment plant, I would see Duffy.

22               I believe he was a supervisor, not the most senior  
23    supervisor at the waste water treatment plan. He was very  
24    familiar with the city's workings. He had been the president  
25    of the city's supervisors's AFSCME union.

March 28, 2022

1515

1       Q. And I think it could be confusing, because it is a little  
2 bit for me.

3                     Is there a difference between the waste water plant  
4 and the water treatment facility?

5       A. Yes. Those are two different facilities. They do both  
6 involve treatment if there's water going through. But the  
7 physical Flint Water Plant that we saw the picture of with that  
8 actually kind of nice stone front, that's on the bank of the  
9 Flint River on the city's north side.

10                  And then there's a separate waste water facility  
11 where all the sanitary sewer water flows to that's actually  
12 physically located just outside of the City of Flint's  
13 boundaries.

14                  It's co-located with the Genesee County Drain  
15 Commissioner's waste water treatment plant, even though they're  
16 two separate facilities. Those plants then treat the sanitary  
17 water and then they deposit it back in the river once it's  
18 treated to that safe standard.

19       Q. So is it fair to say that before the 2014 water switch,  
20 Duffy Johnson's experience, as far as you knew and perceived,  
21 was in waste water versus the water that was coming from the  
22 Flint Water Treatment Plant?

23       A. Yeah, I knew he had been waste water when he got elevated.  
24 There were certain city employees who over a period of time  
25 would work in different facilities. So, again, we would have

March 28, 2022

1516

1      to look up his record to know.

2      Q. And do you know -- I assume the answer is going to be the  
3      same, but just for the sake of completion.

4                  Do you know whether Mr. Johnson ever obtained an F1  
5      license to operate the Flint Water Treatment Plant on a  
6      full-time basis?

7      A. I don't believe he did. With the others, there may have  
8      at least been discussions. But Duffy Johnson, in the  
9      director's role, I don't remember him ever, you know,  
10     commenting about aspiring to that or planning to do that.  
11     That's my memory.

12     Q. I want to talk to you for a minute about two engineering  
13     consultants that have been discussed during this case.

14                  Are you familiar with LAN and Rowe?

15     A. Yes. I'm familiar.

16     Q. And if you don't mind, could you tell me what you know or  
17     tell the jury what you know about Lockwood, Andrews & Newnam  
18     Inc., a Leo A Daly Company?

19     A. So this is what, yeah, we referred to as LAN. And LAN had  
20     -- LAN had been a long-time engineering contractor for the City  
21     of Flint. So this would have been before my time.

22                  But I understood they had been involved in some of  
23     the upgrades that had been made when some federal rules changed  
24     about what the city needed to do. Even to be a backup, you  
25     have to have certain standards and equipment just to be that.

March 28, 2022

1517

1           And that LAN had been involved in that. And had done  
2 other work for the city over the years.

3 Q. Did you ever become aware that LAN was playing a role of  
4 any kind when it came to the switch from the DWSD Lake Huron  
5 source to the Flint River?

6 A. I learned some specifics about that after the fact in,  
7 like, January of 2015 in some conversations with Mr. Croft.  
8 But I knew that LAN was involved with the city's Water  
9 Treatment Plant.

10           LAN had been either brought on specifically or a  
11 contract had been amended for LAN to do some of the technical  
12 work on the city's response to the TTHM violation that came up  
13 in fall of 2014.

14 Q. And we've already -- you've already been kind enough to  
15 point him out to us in the courtroom.

16           But does this photo -- is this Warren Green?

17 A. Yes.

18 Q. And during the period of time when you were mayor, did you  
19 ever encounter Warren Green in Flint?

20 A. I believe so. I don't think I can name specific times.  
21 But he was someone -- you know, he was someone who I was  
22 familiar with.

23 Q. And you've been in -- you know, you sat in a lot of  
24 meetings as mayor, right?

25 A. Yes.

March 28, 2022

1518

1       Q. Meetings that involved a whole host of things that you've  
2 already talked about today, right?

3       A. Yes.

4       Q. Was there ever a meeting you were in where somebody from  
5 the city either whispered or smoke loudly to you and said, "We  
6 need to cut Warren Green out of everything about this water  
7 stuff"?

8       A. No.

9       Q. Was there ever any text messages exchanged or phone calls  
10 made where somebody from the city said to you personally, "We'd  
11 be better served if there's no Warren Green anywhere to be  
12 seen"?

13      A. No. I mean, that would have raised a red flag for me,  
14 because that's -- that's not how I operated.

15      Q. Were you -- when you knew that LAN was there or you  
16 encountered Warren Green, did you feel good about it? Bad  
17 about it? How did you feel about them being there?

18      A. Well look, I mean, everybody has their own approach. Mine  
19 is kind of like I illustrated when I made those comments about  
20 the emergency manager when I was just getting reelected is I'm  
21 someone who values those scientific opinions.

22                   And I don't have any problem with someone having a  
23 different view of mine or, you know, we can respectfully  
24 disagree. That happens all the time, especially with the city  
25 council.

March 28, 2022

1519

1           So, look, you don't have to be an expert on much of  
2 anything to look at the City of Flint's government and say,  
3 "It has limited capacity." I mean, this kind of is something  
4 that's widely understood whether it's myself in Flint or, you  
5 know, a mayor in Gary, Indiana, or any municipal governments,  
6 for that sake.

7           So you're just asking me my view. I mean, I was  
8 always interested in what did Rowe Engineering have to say in  
9 our role as a city engineer. What did a planning consulting  
10 team have to say? I can't speak for how others interpreted  
11 it.

12           I wouldn't be surprised if there were some people in  
13 the city who, you know, felt like that was stepping on toes or  
14 who had some issues with that. But that certainly wasn't my  
15 approach, and I don't think anybody who would have worked with  
16 me would have had that kind of sense.

17 Q. Okay. You just mentioned Rowe. Tell the jury a little  
18 bit about Rowe. They've heard the name before. There's been  
19 some testimony about Rowe.

20           What's your experience with Rowe? What do you know  
21 about Rowe during the period of time when you were mayor?

22 A. So Rowe was a -- had a major physical presence in Flint.  
23 Actually had offices right downtown. And had a long -- another  
24 company that had a long-time relationship with the City of  
25 Flint.

March 28, 2022

1520

1           While I was in office, even when I came into office,  
2 Rowe had a contract with the city to actually act as the city's  
3 engineer.

4           In a lot of communities, maybe you would have your  
5 own city engineer on the payroll. We had Rowe Engineering  
6 operating as the city engineer. Most of the time, those  
7 services were provided by Mr. Rick Freeman.

8           So Rowe was involved with city in a general sense for  
9 public works. But then, you know, Rowe would also be bidding  
10 on individual projects.

11           So if we're redesigning a city -- I mean, redesigning  
12 a street intersection or doing a study of one-way to two-way  
13 streets, you know, I'm sure Rowe had some other individual  
14 contracts with the city during this time as well as serving as  
15 the city's engineer.

16 Q. And when you say Rowe served as the city's engineer, were  
17 they -- I think you just answered the question.

18           But for clarity, were they exclusively focused on  
19 water engineering, or was there a variety of engineering  
20 services that Rowe provided?

21 A. The city engineer's role was broad across public works.

22 Q. Were there times when you were mayor or during the period  
23 of time where there was an emergency manager and you were mayor  
24 in title only, when you were aware that Rowe had either  
25 solicited or brought in outside engineering companies to assist

March 28, 2022

1521

1       in engineering services for the City of Flint?

2       A. I don't know about maybe the specifics beyond, again, the  
3       city as a whole would have a lot of different engineering work  
4       that would be being done at a time. So there would be other  
5       firms, you know, involved. But I think that city engineer's  
6       contract was not, by engineering contracts, a large one.

7                   I'm sorry. Was that my question?

8       Q. You answered my question great or as well as you could  
9       have, and it was a good answer.

10                  You talked a little bit earlier about sitting on the  
11       KWA committee and the five -- the group of five and whatever.

12                  Was there a point in time after that committee was  
13       formed where you personally came to the conclusion that the  
14       best option for the City of Flint going forward was to utilize  
15       the KWA pipeline?

16       A. Yes. And let me just make one clarification, and then  
17       I'll give a bit more detail.

18                  You're now talking about the City of Flint  
19       contracting with the KWA for the provision of water, yeah.

20       Q. Let me ask it -- let me ask it a different way.

21                  It's fair to say that there was a healthy debate  
22       beginning as early as when you first became associated with the  
23       KWA about Flint's future water receipt, right, where they were  
24       going to get water from, right?

25       A. Yes.

March 28, 2022

1522

1     Q. You told the jury, I think, that you didn't run on the KWA  
2     as a big part of your campaign, right?

3     A. Right. But people knew I was open to it, that I was  
4     exploring it.

5     Q. But did there come a point in time where you went from  
6     open to it to, "This is what I think we should do"?

7     A. Yeah. And there was -- so yes. And there was a private  
8     part and a public part. So the private part was summer of 2011  
9     -- I don't know what popped up here.

10    Q. I'm going to get rid of that. You go ahead.

11    A. So in the summer of 2011, so it was pre-emergency manager,  
12    myself, city council, we had an opportunity to review a report  
13    that had looked at the full cost of the city using the Flint  
14    River as now a long-term water supply option.

15               And this would some reservoirs and dams. So there  
16    was a flow of water and actual capital improvement at the  
17    physical Flint Water Plant.

18               So myself and city council reviewed that report.

19               And, actually, we were -- myself and city council leadership,  
20    including City Council President Scott Kincaid at the time, we  
21    were ready to have that resolution considered by city council.

22               I was ready as mayor to send that resolution to city  
23    council that we would contract with the KWA for raw water,  
24    given these really high costs, \$60, \$70 million in capital  
25    improvements for the Flint River to be an option long-term.

March 28, 2022

1523

1           And council president and I decided that, given that  
2 we were right up next to a mayoral election -- because I was  
3 literally running door to door in the evenings -- that that  
4 was not the appropriate time for the city to make a decision  
5 of that consequence.

6           This should really be something that should be done,  
7 you know, not in the midst of a campaign. It shouldn't be a  
8 polarizing issue. So I agreed with that, and I did not send  
9 the resolution.

10          And then we got the call about the appointment of the  
11 financial emergency and the impending appointment of the  
12 emergency manager. So I was reelected at that point.

13          City Council President Kincaid and I had another  
14 conversation about whether we should do this before the  
15 emergency manager comes. Because once the emergency manager  
16 comes, that person's going to act as the mayor and the  
17 council.

18          And we were of the same mind. And there were six to  
19 seven city council members out of nine who were prepared to  
20 vote yes. And that's a pretty good number in Flint.

21          So we actually decided again that I should not send  
22 that resolution. That it was not the right time. That this  
23 was a very important -- it was a very long-term decision for  
24 the community. It shouldn't be made under cloud of, you know,  
25 when's this person going to get appointed.

March 28, 2022

1524

1           So I did not send that resolution to city council.

2       There's not a record of a resolution in the city clerk's  
3       records.

4           So then as you -- as we talked before, it came  
5       something that the emergency manager was studying as part of  
6       the overall finance and management of the city.

7           Fast forward to March of 2013, after all of that  
8       analysis had now been done for, like, the third time -- like,  
9       it was done by myself and the city council, it was done by  
10      Mike Brown, it was done by Mr. Kurtz, State Department of  
11      Treasury.

12           Like, everybody was looking at these numbers, what  
13       would the different cost scenarios be, what would be best for  
14       the City of Flint. And the emergency manager I knew was  
15       prepared to sign the water contract with KWA.

16           So I went to a city council meeting. I have no vote  
17       at city council. I have no control over the emergency  
18       manager.

19           And I made a public statement that the city should go  
20       with KWA as a long-term water source, that it should sign that  
21       contract under all that analysis that had been done, that that  
22       was the best option for the city.

23           MR. STERN: Your Honor, I don't know what the signal  
24       is. But would this be an okay time, because I need to use the  
25       bathroom.

March 28, 2022

1525

1                   THE COURT: Sure. This would be an okay time for our  
2 second break. So please rise for the jury. We'll take about  
3 15 minutes.

4 || (Jury Out)

5                   THE COURT: Anything at this time? Okay. Good. See  
6 you in about 15 minutes.

7 || (Brief Recess)

THE CLERK: All rise for the jury.

9 THE COURT: Welcome back. Please be seated.

10 Mr. Walling is still on the stand and still under oath to tell  
11 the truth. Thank you.

12 THE WITNESS: Yes, Your Honor.

13 MR. STERN: May I?

14 THE COURT: Yes.

15 BY MR. STERN:

16 Q. Mayor Walling, when we left, you had just testified that  
17 at some point, your opinion was that it was in the best  
18 interest of the city to transfer over to the KWA pipeline,  
19 correct?

A. Yes. For the long-term water source.

21 Q. Okay. I'd like for you and for the Court to know that  
22 Tab 4 of your first binder is an exhibit that I have marked as  
23 Plaintiffs' 602-43A. These appear to be some handwritten notes  
24 with the date January 9, 2013.

THE COURT: Could you tell me again what exhibit.

March 28, 2022

1526

1 MR. STERN: No problem. It's Tab 4.

2 THE COURT: Oh, Tab 4.

3 MR. STERN: Yes, ma'am.

4 THE COURT: Okay.

5 MR. STERN: And it's Plaintiffs' Exhibit 602-43A.

6 BY MR. STERN:

7 Q. Mayor Walling, do these appear to be your handwritten  
8 notes?

9 A. Yes.

10 MR. STERN: Your Honor, I seek to admit into evidence  
11 602-43A.

12 MR. CHRISTIAN: No objection.

13 MR. ERICKSON: No objection.

14 THE COURT: Okay. Well, then it's received.

15 (Plaintiff Exhibit No. 602-43A Admitted Into Evidence.)

16 BY MR. STERN:

17 Q. So I'm going a little old school with the ELMO and hoping  
18 that I can manage this.

19 Do you see here, Mayor Walling, that the date is  
20 January 9, 2013?

21 A. Yes.

22 Q. Okay. Tell me -- tell the jury -- doesn't matter what you  
23 tell me.

24 Tell the jury what was happening based on the title  
25 line on the first line of this note in terms of what you were

March 28, 2022

1527

1      taking notes of?

2      A. This is a meeting that is taking place that I'm present.  
3      These are my notes between City of Flint individuals, so that's  
4      COF. And treasury relates to the State Department of Treasury.

5                 This is the state body that the emergency manager  
6      effectively reports to. And every City of Flint expenditure  
7      over \$50,000 needs to be approved by the Michigan Department of  
8      Treasury. That's how the emergency manager operates on a  
9      day-to-day basis.

10                And this meeting is taking place around this ongoing  
11     analysis of the City of Flint's long-term water supply. We're  
12     still using DWSD every day. It's coming out of the taps. But  
13     this is a question about what the city will do long-term.

14                THE COURT: So when it says "treasury," that's the  
15     State of Michigan Treasury?

16                THE WITNESS: Yes. The State of Michigan Treasury --

17                THE COURT: Okay.

18                THE WITNESS: -- and this meeting is actually  
19     occurring at the Michigan Department of Treasury in Lansing.

20                THE COURT: Okay.

21     BY MR. STERN:

22     Q. And there's a note here that says, "Fraser asked about  
23     City of Flint position. I don't know."

24                Who was Fraser?

25     A. Fraser, Robert Fraser, I believe his title was deputy

March 28, 2022

1528

1 treasurer in the Michigan Department of Treasury. And under  
2 the different functions of the State Department of Treasury,  
3 one of Roger Fraser's duty was local government finance.

4 And that included the reports and interactions with  
5 the various appointed emergency financial managers. I think  
6 there were probably 12 or 15 across the state at this time.

7 Q. Okay. These notes, just taking a step back, are these  
8 your perceptions of what other people were saying at this  
9 meeting?

10 A. It's both. So I'm a diligent notetaker when I'm in  
11 meetings. I try to use a standard format. So if you look at a  
12 lot of these, you'll see dashes. Or when there's, like, a new  
13 main point, a star is when a point relates to that.

14 Generally, these are -- these are either, like, me  
15 paraphrasing key points in the discussions. And then  
16 occasionally, something strikes me as really important. And  
17 that kind of just taking this note as I go.

18 So you have a line I see highlighted in your version.  
19 So Mr. Fraser, you know, asked the City of Flint about its  
20 position on the long-term water supply. That photocopy is a  
21 bit cut off. But that's "I don't know" in quotes, which would  
22 have been spoken by Mr. Kurtz.

23 And that's supposed to say, "EFM." So the "M" got  
24 cut off of the either -- well, sometimes I ran off the page,  
25 too. So it might be the photocopy or it might be my notes.

March 28, 2022

1529

1           But when asked directly the question on this date,  
2 Mr. Kurtz's response as the city's emergency finance manager  
3 was, "I don't know."

4           Meaning this was still under discussion. And I took  
5 that to be a true statement. He just came right out and said  
6 it, so I thought that was important to note.

7 Q. And so at this meeting, is it also fair to say that  
8 somebody said or you took a note that the Flint River as a  
9 primary water source had been eliminated from the discussion?

10 A. Yes. So that just to say, these three options of City of  
11 Flint could either long-term theoretically, use the Flint River  
12 on a permanent basis, could contract with the KWA for water  
13 that would come through a pipeline and then be treated in  
14 Flint.

15           Or the third option would be to sign, you know, a  
16 contract with DWSD just like we had for the last, you know, 40,  
17 50 years.

18 Q. And --

19 A. And then, yes, so going around a bit here. So at this  
20 point, early 2013, the emergency financial managers -- well, at  
21 this point, Mr. Kurtz was saying the Flint River was not being  
22 examined as a long-term water supply.

23           I had come to that decision earlier, but this is the  
24 emergency manager stating it.

25 Q. When you mentioned earlier to the jury that you had come

March 28, 2022

1530

1      to that conclusion earlier, do you remember why? Why did you  
2      decide? Why did you come to the conclusion that long-term it  
3      shouldn't be the Flint River?

4      A. Yes. It was based on this review of costs of what it  
5      would actually take that Rowe Engineering had coordinated. And  
6      it just -- especially, the cost of the dams and the reservoirs.  
7      In order for the Flint Water Treatment Plant to actually draw  
8      water out of the river to then go in to be treated, it has to  
9      be at a certain level. And obviously water, you know,  
10     fluctuates in terms of rain fall, and it may be fine for a few  
11     years.

12            But if you're signing onto the Flint River in the  
13     21st century, not under, you know, the old pre-Environmental  
14     Protection Agency era of drinking water, what do you need to  
15     do to make sure that water supply is consistent?

16            And that price tag of \$65, \$70 million, it didn't  
17     make sense to me, given our other options. You know, Detroit  
18     was an option. And we also had incorporated this public  
19     authority to actually provide Lake Huron water.

20            Because when you say the KWA pipeline, we're  
21     referring to Lake Huron water being brought over about, you  
22     know, 70 miles approximately along the I-69 route to Flint and  
23     Genesee County. So one option was off the table.

24      Q. There's another note here that you'll see in your  
25     handwriting, says, "EFM looking at KWA versus DWSD 1."

March 28, 2022

1531

1           Does that essentially memorialize that Door number 3  
2 had been locked, and now we're just looking at two doors?

3       A. Yes. Two doors. But there's multiple other doors through  
4 DWSD. So I don't recall the specifics. But there were, at  
5 that time, a handful of ideas about how Flint and Genesee  
6 County could sign with Detroit, but do it in a way that  
7 slightly changed the cost structure of the contract.

8           And I believe this idea of something going to Baxter  
9 Station was one of these. We had dozens of these over the  
10 course of these years of negotiations.

11      Q. I'm going to turn the page. We've printed on two sides.

12           Can you find anywhere on the first page where the  
13 bunch holes are on the left, which I just highlighted, and the  
14 back page where the punch holes are on the right, can you  
15 point to anything in this note that talks about the safety of  
16 using the Flint River water as a water source?

17      A. Give me a minute, since you're asking me the actual  
18 document here.

19      Q. Take your time.

20      A. No. This was primarily about the financial analysis.  
21 There was an expectation that any drinking water in Flint would  
22 be safe.

23      Q. Okay.

24      A. This was about, you know, what would it take to choose one  
25 option or another, what was being discussed. This was, like,

March 28, 2022

1532

1        updating the deputy treasurer on the state of affairs.

2        Q. And it's fair to say that as of January 9, 2013, that no  
3 decision had yet been made by the emergency manager or anybody  
4 else as to utilizing and moving to the KWA or re-upping with  
5 some form of the DWSD, correct?

6        A. Correct.

7        Q. There was still ongoing discussions about what the right  
8 choice was, right?

9        A. Yes. And the interesting thing was, you know, I had  
10 stated that I had come to the conclusion that, let's say, much  
11 of this would have never happened, and city council and I would  
12 have met like usual in the fall of 2011.

13                  We may have, at that point, signed a contract with  
14 KWA, based on the different negotiations that we had attempted  
15 with DWSD.

16                  The interesting thing about the discussions with DWSD  
17 is there were these different ideas that kept getting put on  
18 the table that would change the cost of what Flint would pay  
19 to DWSD.

20                  So even though I had already, you know, sometime ago,  
21 come to the idea that KWA was best, I was still interested in  
22 these, because there were versions of the city contracting  
23 with DWSD that made a lot of sense.

24                  And the City of Detroit at this point is under  
25 emergency financial management. City of Flint is under

March 28, 2022

1533

1       emergency financial management. Both of those emergency  
2 financial managers are reporting to the State Department of  
3 Treasury.

4                   So the equation's a little different here in, you  
5 know, winter of 2013 than it would have been previously.

6 Q. Than it would have been in 2011 when you said you were on  
7 the verge of sending it to the council, right?

8 A. Yeah. We had spent also time trying to negotiate with  
9 DWSD and didn't come to anything that fundamentally changed the  
10 numbers. But -- but it is possible that something could change  
11 the numbers in this scenario.

12 Q. Okay. I'd like for you if you would please go to Tab 5 of  
13 that same binder.

14                   MR. STERN: And, Your Honor, this is another  
15 handwritten note from January 10, 2013. It has not been  
16 previously marked, but we've marked it as Plaintiffs' Exhibit  
17 602-43B. And I would seek to move into evidence this  
18 document.

19                   THE COURT: Mr. Christian?

20                   MR. CHRISTIAN: No objection, Your Honor.

21                   MR. ERICKSON: Once the witness identifies that it's  
22 his, we have no objection.

23                   THE COURT: Okay. Thank you, Mr. Erickson.

24                   Do you see that exhibit in your binder?

25                   THE WITNESS: Yes, Your Honor.

March 28, 2022

1534

1                   THE COURT: Do you know what it is?

2                   THE WITNESS: Yes. These are my notes.

3                   MR. STERN: I apologize for not laying the  
4 foundation.

5                   THE COURT: From January 10 of 2013?

6                   THE WITNESS: Yes.

7                   THE COURT: Okay. Any objection, Mr. Erickson?

8                   MR. ERICKSON: No. No, Your Honor.

9                   THE COURT: Mr. Christian?

10                  MR. CHRISTIAN: No, Your Honor.

11                  THE COURT: Okay. Then we'll receive it.

12                  (Plaintiff Exhibit No. 602-43B Admitted Into Evidence.)

13                  BY MR. STERN:

14                  Q. You'll see as was just discussed this is a -- I apologize.  
15 New dog old tricks. I'm trying to use this machine.

16                  1-10-2013. Could you tell us this title on this  
17 first line, what type of meeting this is?

18                  A. So -- yeah. So it's the January 10, 2013, meeting. The  
19 EFM or Emergency Financial Manager Advisory Council -- so that  
20 was a formal -- it was a formal body, formal for the emergency  
21 financial managers. Not a part of our normal city operations.

22                  And I was appointed to this advisory council. I  
23 believe we had two city council members who were on this  
24 advisory council. And then there were a number of community  
25 and business and neighborhood civic leaders who were on this

March 28, 2022

1535

1       body.

2                  It met approximately once a month. And this was, as  
3 I understood the emergency financial manager's thinking, this  
4 was a way for kind of the key community players, apart from  
5 that individual, to be in the same room together to get an  
6 update on some major city affairs.

7                  It was not conducted under the Open Meetings Act.  
8 This was a meeting in what we would call the mayor's conference  
9 room right in the mayor's suite at city hall with two city  
10 council members present and no decisionmaking authority. It  
11 was able to be conducted in that kind of just private setting.

12 Q. Do you see I just drew a -- this is the document we were  
13 just looking at. You see the date at the top, and I just drew  
14 a black line, three black lines actually, underneath Smith  
15 Village and North Franklin. And then under it says, "water  
16 decision."

17                  Do you see that?

18 A. Yes.

19 Q. Earlier, you testified about all of the different roles  
20 and responsibilities that the mayor had besides water. And I  
21 think you also testified about all the different roles and  
22 responsibilities that the emergency manager had when he stepped  
23 in or they stepped in respectively for the mayor in the city  
24 council.

25                  Do you recall that?

March 28, 2022

1536

1      A. Yes.

2      Q. I look at everything above this black line. And is this  
3      -- is everything above the black line indicative of a number of  
4      different roles that the EM was playing at the time, or is it  
5      solely related to water?

6      A. Yeah. These are the range of city responsibilities.

7      Q. And so, again, when you're having these meetings, whether  
8      it's on the 9th or the 10th or whatever days y'all are meeting,  
9      these meetings were not solely about the utilization of the  
10     Flint River or moving to the KWA, correct?

11     A. Not solely. Yeah, looks like this one may have been half  
12     or a third.

13     Q. So then we get down to what appears to be the water  
14     decision.

15                  Do you see that?

16     A. Yes.

17     Q. And tell us about this first note, "Tucker Young analysis  
18     full of errors."

19                  And that's -- it appears you attribute that comment  
20     to the emergency financial manager.

21                  What is that note, and what does it mean?

22     A. So as the city, as the emergency financial manager was  
23     moving the city towards a decision on its long-term water  
24     supply and bringing the Department of Treasury, kind of keeping  
25     the Department of Treasury updated with that conversation, the

March 28, 2022

1537

1      State Department of Treasury had arranged for their own review  
2      of the review of using kind of Flint River and other options  
3      that had been presented over time.

4           So Tucker Young is another engineering company. And  
5      they worked, my understanding, for the State Department of  
6      Treasury.

7           And they were independently reviewing both some of  
8      the financial, as well as some of the water on a plant planning  
9      and analysis documents so that as the Michigan Department of  
10     Treasury made a decision on what the emergency financial  
11     manager may recommend, this is my understanding, that they  
12     would have a picture of the data themselves.

13    Q. And there's a number of notes here. I mean, one of them,  
14    you know, obviously bias towards Detroit.

15           You see that note?

16    A. Yes.

17    Q. And that note, was that something else that was -- came  
18    out of the mouth of the emergency financial manager at the  
19    time, based on your recollection of these notes?

20    A. Yes. Those are -- those are -- they're full of errors and  
21    obviously biased towards Detroit were comments that Emergency  
22    Financial Manager Ed Kurtz made.

23           Tucker Young had a long-time engineering relationship  
24    with the DWSID system. And at least to my knowledge, they had  
25    not done work in the City of Flint. So this was the emergency

March 28, 2022

1538

1 financial manager, you know, stating his view, which I was  
2 making note of.

3 Q. And it's fair to say or would you agree, sir, that at this  
4 point in time, there's a lot of political considerations that  
5 are being made with regard to Flint's future water supply?

6 A. Yes. All of these decisions we make are political.

7 Someone serving in elected office, that's part of the job. I  
8 would say it's just -- it's a high-stakes decision, because  
9 this is a long-term multi-decade financial decision.

10           Whoever the City of Flint is paying for some portion  
11 of water, the KWA or Detroit, you're talking about that amount  
12 of money over, you know, 30, 40 years. I mean, this is a very  
13 consequential decision.

14           And as I explained, and I certainly don't pretend to  
15 speak for him, but according to the laws in place, the State  
16 Department of Treasury and the governor are both invested  
17 directly in Detroit and directly in the City of Flint in ways  
18 that are not usual.

19           Because in usual environments, you have a city  
20 council and a mayor, and, yes, there's a state government, but  
21 it's not the state government that's approving every  
22 expenditure, you know, over some amount of money.

23 Q. So I look at this below the black line, which is on your  
24 screen and in front of you. And there are one, two, three,  
25 four, five, six, seven, eight, nine, ten. There is 11 lines

March 28, 2022

1539

1        where you made notes underneath those black lines that I drew.

2                  Do you see that?

3        A. Yeah. I've got ten.

4        Q. You're probably right. You're the mayor. I wasn't. So  
5 we'll just go with ten or 11.

6                  Can you point to anything in those ten or 11 lines  
7 where one of the considerations that are being made at this  
8 January 10 EFM advisory counsel meeting was the safety of the  
9 water?

10                Can you point for the jury where you're discussing  
11 safety as one of the considerations?

12        A. These were discussions about the finances, about planning.  
13 I mean, there were, as I understand it, you know, other  
14 conversations that maybe city staff were having with other  
15 state personnel.

16                But treasury had a specific role in terms of  
17 approving expenditures.

18        Q. And at this point in time, we're in January 2013, you've  
19 already described the key stakes that were in play. You've  
20 talked about you came to the conclusion because of the costs.

21                Were you personally, at this point in time,  
22 considering anything besides costs when it came to what  
23 Flint's future water supply was going to be?

24        A. I'm focused on cost. But it's in the context of expecting  
25 that drinking water is going to be -- is going to be safe. So

March 28, 2022

1540

1       that wasn't the discussion.

2       Q.    Right.

3       A.    And then once you get past costs, there were discussions  
4       about, "Well, what might be a tie breaker?"

5               So let's say the Detroit renewal contract and the KWA  
6       contract plus the city treatment costs, what if those two costs  
7       were exactly the same? What would be a tie breaker?

8               You know, a tie breaker would be at that time, and  
9       certainly in my mind, greater cooperation with the I-69  
10      corridor. That Flint being a place that both kind of  
11      connected down to Detroit. We're going to do that anyway.  
12      We're still a big part of the auto industry.

13               But then how do we build some relationships across  
14      the growing county of Lapeer.

15               So we did -- I don't know that that was part of this  
16      exact meeting that we're talking about, but those were the  
17      considerations in my mind.

18       Q.    And I'm going to fast forward a bit. We'll look some more  
19      at your notes.

20               But between January 10, 2013, which is the document  
21      note -- the notes that were dated January 10, 2013, which we  
22      just looked at, and April 2014, when Flint actually made the  
23      switch to the Flint River, were you ever called by any of the  
24      engineering companies, whether it was LAN or Rowe or Tucker  
25      Young and Jackson or any engineering companies that said,

March 28, 2022

1541

1     "Mayor Walling, you cannot do this. You should not do this,  
2     it's not safe"?

3     A. I was not.

4     Q. Did you ever have any conversations with anybody else at  
5     the city whom you were associated with where they told you that  
6     someone had made a big issue or any issue of the safety of  
7     switching to the Flint River?

8     A. No, nothing specific. You're talking about by the time  
9     you go up to April of 2014. That's what you said, right?

10    Q. Yes, sir.

11    A. I would be aware that the city needed to do a whole number  
12    of things before the Michigan Department of Environmental  
13    Quality was going to allow that water to be distributed in the  
14    system. So I would have known that in general.

15    Q. Right. But were you ever at the Water Treatment Plant and  
16    any meetings with someone from LAN or Warren Green where you  
17    overheard someone say, "Man, you can't do this, it's not safe"?

18    A. No. And at that particular time -- and this varied over  
19    time. Like, we're looking at these notes from 2013. Winter  
20    2014, I was having very limited interactions with anyone around  
21    public works.

22                  I might get an update at a staff meeting or an  
23                  in-the-hallway conversation with Mr. Croft as director of  
24                  public works. But no.

25    Q. In your time as mayor from the time you were first elected

March 28, 2022

1542

1       during the special election and the end of your second term or  
2       the end of your term and a half, you know, however you refer to  
3       it in 2015, were there occasions where the city enlisted the  
4       help of outside parties to deal with discreet, specific  
5       technical issues for the city?

6       A.    Yes.    Yes.    I mean, across a whole range of different  
7       areas.   Not just public works.

8       Q.    Well, we went through earlier -- I mean, the judge  
9       actually sustained a question I asked you about your own  
10      knowledge about chemicals and chemistry.   And that's, you know,  
11      okay.

12                  We've talked about each of the emergency managers and  
13      what you knew about their experience and education --

14                  MR. CHRISTIAN: Objection. Is there a question?

15                  THE COURT: Go ahead.

16                  MR. STERN: Thank you. I'm going to start over, if  
17      that's okay.

18                  THE COURT: Okay. Maybe make it a shorter question.

19                  MR. STERN: I'll do my best.

20      BY MR. STERN:

21       Q.    Do you recall our conversation about each of the emergency  
22      managers and their experience?

23       A.    Yes.

24       Q.    You recall our conversation about Mr. Croft, Mr. Johnson,  
25      and Mr. Wright and their experience?

March 28, 2022

1543

1     A. Yes.

2     Q. I just asked you a series of questions you'll recall about  
3     safety coming up in any of these meetings.

4                  You recall that?

5     A. Yes.

6     Q. We also just discussed very briefly that when you were  
7     mayor, at many points in time, the city enlisted outside  
8     companies to assist with discreet technical issues, correct?

9     A. Yes.

10    Q. When it came to the safety issues associated with  
11    switching to the Flint River or utilizing the KWA pipeline, who  
12    within city government would you have relied on or who outside  
13    of city government would you have relied on for those decisions  
14    as of 2013?

15    A. 2013?

16    Q. Yes, sir.

17    A. I would have looked to the emergency financial manager.  
18    The director of public works both. So Mr. Howard Croft for the  
19    city. Rowe Engineering was involved in looking at the Tucker  
20    Young's review of the review. So I was paying attention to  
21    Rowe Engineering's notes on these various perspectives.

22                  At that time, that's who I would have been  
23    interacting with and would have been looking to for  
24    information for guidance.

25    Q. And you later came to -- did you later come to find out

March 28, 2022

1544

1       that any other engineering firms during that period of time  
2       were also working on issues associated with transitioning the  
3       treatment plant to service and treat the Flint River?

4       A.    Yes. So at a later point, because at this decision time,  
5       there may have been others involved beyond Rowe. But then LAN  
6       was involved with the work for the Flint Water Treatment Plant  
7       to be ready to be used after that decision was made at a future  
8       point in time.

9                   And then LAN was involved in the TTHM response after,  
10       you know, that water had been in the system for some months and  
11       that notice went out to the public the very end of 2014.

12       Q.    Based on your interactions with Mr. Brown, Mr. Kurtz,  
13       Mr. Croft, Mr. Johnson, Mr. Glasgow, and Mr. Wright, as well as  
14       your interactions with a number of engineering firms that had  
15       been doing work for Flint, including Rowe and LAN, who would  
16       you have deferred to when it came to the science of water  
17       treatment as between the governmental folks on the one hand and  
18       the private engineering companies on the other?

19                   MR. CHRISTIAN: Objection. Compound question.

20                   THE COURT: It's just a long question.

21                   Who did you rely on or who did you look to if you  
22       wanted technical input?

23                   THE WITNESS: I would have looked to both. This is  
24       part of the reporting structure in the city is you want to  
25       hear from your director of public works, even though it's not

March 28, 2022

1545

1       someone at this point who is reporting to me or that I  
2 appointed. But the --

3                  THE COURT: When you say, "both" --

4                  THE WITNESS: Yeah. Sorry.

5                  THE COURT: Okay.

6                  THE WITNESS: Both the governmental individuals that  
7 were listed, as well as the engineering firms that may have  
8 been involved. That were involved.

9 BY MR. STERN:

10 Q. I want to move to Tab 7.

11                  MR. STERN: Your Honor, this has been marked as  
12 Plaintiffs' Exhibit 1097. This has not yet been entered into  
13 evidence.

14 BY MR. STERN:

15 Q. Mayor Walling, have you ever seen this document before?

16                  You'll notice on the top-right corner, it appears a  
17 stamp that says, "Dayne Walling, Mayor?"

18 A. Yeah. Yeah. So I was familiar with this letter. This is  
19 going out of the office, out of the city office to State  
20 Treasurer Andy Dillon from Emergency Manager Ed Kurtz.

21                  So that top that you referred to, this is the --  
22 that's the standard letterhead that the city would use at that  
23 time. Occasionally it was varied. It was just digitally  
24 printed.

25                  But, yeah, you have Ed Kurtz as emergency financial

March 28, 2022

1546

1 manager on the left. Myself as mayor on the right.

2 MR. STERN: Your Honor, I seek to admit into evidence  
3 Plaintiffs' Exhibit 1097.

4 THE COURT: Any objection?

5 MR. CHRISTIAN: May I voir dire the witness briefly,  
6 Your Honor?

7 THE COURT: Certainly.

8 And what that -- "voir dire" is French, which is to  
9 see and to hear. And so what it means is can I quickly have a  
10 couple of questions to make sure he knows what this letter is.  
11 That's what that means.

12 VOIR DIRE EXAMINATION

13 BY MR. CHRISTIAN:

14 Q. Mayor Walling, did you have contemporary awareness of this  
15 letter when it was going out in 2013?

16 A. I believe that I did. I may have seen a draft or been  
17 shared at a meeting. I knew that emergency manager Kurtz was  
18 sending this communication to Treasurer Dillon.

19 MR. CHRISTIAN: No objection, Your Honor.

20 THE COURT: Okay.

21 MR. ERICKSON: No objection.

22 THE COURT: All right. Then it's received.

23 (Plaintiff Exhibit No. 1097 Admitted Into Evidence.)

24 DIRECT EXAMINATION (continued)

25 BY MR. STERN:

March 28, 2022

1547

1       Q. Mayor Walling, you've already described on some level what  
2       this letter is.

3                  Do you see the very, very last paragraph of this  
4       letter that starts with "therefore"?

5       A. Yes.

6       Q. And who wrote this letter?

7       A. This is -- it's under the signature of Mr. Kurtz. I  
8       believe he wrote this letter. He probably consulted with  
9       Finance Director Ambrose. Possibly the administrative  
10      assistant would have also written a bit of it or added his  
11      signature line, for instance.

12      Q. And is -- what is this letter? What is Mr. Kurtz asking  
13     for here from the treasury department on March 29, 2013?

14      A. Well, he's putting in writing something that had been  
15     verbally communicated, you know, on numerous occasions, which  
16     was that he was ready.

17                  "He" being Mr. Kurtz as emergency manager, was asking  
18     the State Department of Treasury to authorize -- when he says  
19     "the EM," he means him -- to adopt a resolution to enter into a  
20     contract with KWA, the Karegnondi Water Authority, for up to  
21     18 million gallons per day -- maybe that should be MGDS --  
22     based on the above terms which were in the above paragraph.

23      Q. Okay. So this is the reach out from the emergency manager  
24     to treasury saying, "Approve this," right?

25      A. After all these various discussions, like, would you

March 28, 2022

1548

1       please, you know, take this official step and authorize it.

2                 It lays out the rationale that I had communicated  
3 before, that an emergency manager while acting as the mayor and  
4 counsel, was also under a responsibility to gain State  
5 Department of Treasury approval for any expenditure over  
6 \$50,000.

7 Q. I'd like for you now to turn, please, to Tab 8 in your  
8 binder. And this is a letter dated April 11, 2013.

9                 Have you ever seen this letter before?

10 A. Yes, yes. I believe I did see this letter.

11 Q. And was this routine for Mr. Kurtz when he was emergency  
12 manager to share correspondence from state government with you  
13 despite the fact that he had undertaken the power of the mayor  
14 at this time?

15 A. In many cases he would not have. But on matters related  
16 to this decision about the long-term water supply, Mr. Kurtz  
17 seemed to value that I had been engaged with the decision for a  
18 long period of time.

19                 So these interactions were sort of the exception that  
20 proved the rule. That generally he would not have been  
21 consulting with me.

22                 But over these few weeks, I was very much aware of  
23 what was coming in and out of his office. So the physical  
24 arrangement for us in the -- what we call the "mayor suite," my  
25 office, you know, would face kind of forward where a citizen

March 28, 2022

1549

1      might come in.

2                 And then there was a door, the backdoor that went to  
3        a hallway. And that went to the backdoor of what usually would  
4        be the city administrator's office.

5                 But while the emergency financial managers were  
6        there, they actually occupied that office, and I stayed in the  
7        larger mayor's office as it were.

8                 So Mr. Kurtz would often, like, you know, just to  
9        make a point, like, he would knock on the door, and he would  
10       say, "You know, I just got this letter from Treasurer Dillon  
11       that we've been waiting for since I sent him my letter at the  
12       end of March."

13       Q. And is this letter one of those letters that you remember  
14       Mr. Kurtz knocking on your door and saying, "I just got this  
15       letter from Treasurer Dillon"?

16       A. Yeah. And sometimes he was already talking to somebody in  
17       the front. So I don't know whether it was the front door or  
18       the backdoor, but...

19       Q. But you had seen this contemporaneously with when it was  
20       sent, right?

21       A. Yes, yes, right. It was not addressed to me. I don't  
22       think I was copied by email. But this is one that I saw when  
23       it came in.

24                 MR. STERN: I move to admit into evidence  
25       Plaintiffs' 1098.

March 28, 2022

1550

1                   MR. CHRISTIAN: No objection.

2                   MR. ERICKSON: No objection.

3                   THE COURT: Okay. It's received.

4                   (Plaintiff Exhibit No. 1098 Admitted Into Evidence.)

5 BY MR. STERN:

6 Q. You'll see that I highlighted at the top of the letter,  
7 this appears to be addressed to Mr. Kurtz, the emergency  
8 manager.

9                   And then at the very bottom of the letter, you see  
10 it's signed by Andy Dillon, correct?

11 A. Yes.

12 Q. And the letter is dated April 11, 2013, correct?

13 A. Yes.

14 Q. And I highlighted a paragraph that I'd like for you to  
15 read. And then please tell the jury what your understanding  
16 was of this letter from Mr. Dillon.

17 A. All right. So that paragraph reads -- this is from  
18 Treasurer Dillon.

19                   "It is my understanding that the Detroit Water and  
20 Sewer Department is making a final best offer to Genesee County  
21 and the City of Flint next Monday, April 15, 2013.

22                   "As such, this approval will be effective at 5:00  
23 P.M. on April 16, 2013, after receiving written notice from the  
24 City of Flint that either no such offer was presented to the  
25 county and the city or that an offer was received and was

March 28, 2022

1551

1        rejected in good faith based upon specified objections."

2        Q. Okay. So as of April 11, 2013, you would agree that the  
3           treasury department had not yet authorized officially for the  
4           city to move on to the KWA, correct?

5        A. It had not. This letter alone would not be that formal  
6           legal authorization.

7        Q. And the expectation was based on the contents of this  
8           letter that something was coming from the DWSD, right?

9        A. Yes, yes.

10      Q. And what was that something?

11      A. Oh, it was one more version of, you know, some specific  
12           items of what a contract between the City of Flint and Genesee  
13           County and Detroit Water and Sewer Department, DWSD, could  
14           contain.

15                  And that was then presumably something that the  
16                   emergency manager would then need to review in detail to see  
17                   how that might change, you know, costs or other factors.

18                  So that's where we were on that day.

19      Q. All right. So four days later, I'd like for you to --  
20           well, you're going to turn to the tab now hopefully. But  
21           you'll see a document from four days later dated April 15,  
22           2013. Please take a look at Tab 9.

23                  Do you recognize this letter , sir?

24      A. Yes.

25      Q. You were -- were you still, as of April 15, 2013, a part

March 28, 2022

1552

1       of the five-person committee for the KWA?

2       A.     Yes.

3       Q.     And you see that at the very top of this letter, there's  
4           an addressee of the Karegnondi Water Authority at 4160 Beecher  
5           Road.

6                          Do you see that?

7       A.     Yes.

8       Q.     And it was also addressed to Ed Kurtz, emergency manager,  
9           right?

10      A.     Yes.

11      Q.     So not only may you have seen this letter because  
12           Mr. Kurtz would have shown it to you, but you would have  
13           received it because of your role with the KWA at the time,  
14           right?

15      A.     Yes. And DWSD and Ms. McCormick knew my role in that  
16           regard. I see I'm actually formally CC'd on this one as mayor.

17      Q.     Okay.

18      A.     On page -- what's marked as page 5.

19                          MR. STERN: Your Honor, I seek to admit into evidence  
20           a five-page document that is labeled Plaintiffs' Exhibit 1099.

21                          MR. CHRISTIAN: No objection.

22                          MR. ERICKSON: No objection.

23                          THE COURT: Okay. Thank you. Then it's received.

24                          (Plaintiff Exhibit No. 1099 Admitted Into Evidence.)

25      BY MR. STERN:

March 28, 2022

1553

1       Q. Tell the jury what is this letter.

2                     What does this letter mean to you as of April 15,  
3 2013?

4       A. This is the last best offer after this series of  
5 negotiations and discussions that DWSD -- and it's actually  
6 technically right in this one as the Detroit Water and  
7 Sewerage. I think the state treasurer shortened it to "sewer."  
8 But DWSD.

9                     And it's for the consideration of the emergency  
10 manager and the City of Flint. Obviously, myself, you see as  
11 CC'd to Kevyn Orr, who is the City of Detroit emergency  
12 financial manager. Andy Dillon, the state treasurer. I'm on  
13 page 5.

14                  THE COURT: Can you put page 5 up, please?

15                  THE WITNESS: Yeah. I think that's important. This  
16 is just down a little bit. That this is DWSD's director  
17 sharing this proposal with her board share, Mr. Fausone;  
18 Genesee County Drain Commissioner, Mr. Orr, myself and  
19 Treasurer Dillon.

20                  So all of those individuals had been a party to some  
21 -- at least some of these discussions over the prior months.  
22 And every one understood that DWSD would make, you know, one  
23 more effort to see if terms that would make sense for DWSD  
24 could also make sense for Flint and Genesee County.

25       Q. So first and foremost, as of April 15, 2013, based on the

March 28, 2022

1554

1       consents of this letter, no decision had yet been made for  
2 Flint to switch officially to the KWA, correct?

3       A.     No.    No decision had been made.

4       Q.     And you'll see here on page 2, the DWSD is actually  
5 proposing, and it comes a little later in this letter, a  
6 modified rate schedule for the customers of Flint, right?

7       A.     Yes.

8       Q.     And so here, the Detroit Water and Sewerage Department has  
9 actually reevaluated the rate schedule and is attempting to  
10 negotiate with the City of Flint, correct?

11      A.     Yes.    Insofar as one of these scenarios had to do with KWA  
12 becoming a contractor with DWSD in a kind of partnership  
13 between the two authorities where Detroit would continue to  
14 supply some water to our area.   But as KWA as a new customer.

15      Q.     But in that moment in time, April 15, 2013, were the folks  
16 from the City of Flint, meaning the emergency manager and  
17 anybody he tasked with working on this issue, were they  
18 seriously considering as of that date renegotiating and  
19 reentering into a contract with the DWSD?

20      A.     Yes.    I mean, because, you know, cost is at the center of  
21 these negotiations.   And maybe if this hasn't come up before,  
22 it might -- it might help clarify, well, kind of what would all  
23 these discussions be about and why did Flint and Genesee County  
24 feel like the water from DWSD was so expensive?

25                          There are dozens of communities across Metro Detroit

March 28, 2022

1555

1        who receive their water of DWSD. But their master contract has  
2        a set of provisions about your distance and elevation in where  
3        you receive the water and how the Detroit system has to pump  
4        it.

5           So Flint and Genesee County were basically at the end  
6        of the line. So the structure of that contract could really  
7        make a lot of difference. If DWSD said, "We're going to sell  
8        you water at the same price that we're going to sell the City  
9        of Detroit water," we might have been able to sign that  
10      agreement very quickly.

11           Because it would have been a radical change in how  
12      that cost structure was done.

13           And I know that can be confusing. Because when most  
14      of us, like, pay a consumers bill -- that's what we pay in  
15      Flint. I don't know what electrical company you pay here, you  
16      know, the state sets the rate, and everybody pays the same.

17           It doesn't matter whether you're close to the power  
18      station or you're far away from the power station, even though  
19      technically it costs that utility more money to get you  
20      electricity.

21           So without understanding some of that context, it  
22      might not make sense, well, why are we continuing to go back  
23      and forth, and what makes this so important?

24           It's because if the DWSD board and director were to  
25      treat Flint and Genesee County as a wholesale customer instead

March 28, 2022

1556

1       of a regular or some other version of a partnership, then up  
2 until this very last minute, something could have changed.

3           I mean, I was certainly leaning towards KWA. I don't  
4 -- you know, I've told you where my thinking was. But I was  
5 always interested in seeing, "Well, what does DWSD come up  
6 with this time? Is there something that could really benefit  
7 our community?"

8           That's why there's so much attention given to this.

9 Q. And is it fair to say that the primary focus at this time  
10 was cost?

11 A. It was, yeah. Again, that's in the context of there's  
12 probably some -- there's other people having discussions about  
13 maybe other things. But the Detroit water particularly had  
14 always been a very safe, stable source for our community. So  
15 that's what we all were expecting, you know, one way or  
16 another.

17 Q. I'd like for you, if you could please turn to Tab 10 in  
18 your binder. This appears to be a letter dated April 16, 2013.  
19 And it's from -- it appears to be from Ed Kurtz to Andy Dillon.

20           Have you ever seen this letter before, sir?

21 A. Yes.

22 Q. And around April 16, 2013, were you privy to this letter?

23 A. Yes. This was another case where Mr. Kurtz would have  
24 said, "I'm ready to send this to letter to Mr. Dillon."

25           I've got my notes. He was very personally involved.

March 28, 2022

1557

1     This was a major decision for him. This wasn't something that  
2     was done by other staff.

3                   MR. STERN: Your Honor, I seek to admit into evidence  
4     Plaintiffs' Exhibit 1100.

5                   MR. CHRISTIAN: No objection.

6                   MR. ERICKSON: No objection.

7                   THE COURT: Okay. Thank you. Then it is received.

8                   (Plaintiff Exhibit No. 1100 Admitted Into Evidence.)

9     BY MR. STERN:

10    Q. You'll see at the top that it's on the letterhead of the  
11    emergency manager, and it's addressed to Andy Dillon the state  
12    treasurer, and it's dated April 16, 2013, correct?

13    A. Yes. I'll just point out that's a bit different than the  
14    earlier document. The emergency manager would just, you know,  
15    use one letterhead or another.

16    Q. Understood.

17                  The letterhead here is different than the one that  
18    had the mayor's stamp on the right-hand corner?

19    A. Yeah, this is an emergency manager letterhead.

20    Q. All right. And here you'll see that Mr. Kurtz appears to  
21    be telling Treasurer Dillon that there was a Scenario 1, a  
22    Scenario 2, and that these two scenarios were the options that  
23    were proposed by DWSD, correct?

24    A. Yes.

25    Q. Okay. And he says that, "After review of the offer" --

March 28, 2022

1558

1       and I believe -- and correct me if I'm wrong. He's referring  
2 to -- he's referring to the April 15 offer that we just looked  
3 at from a day earlier, correct?

4 A. Yes. That was the last offer.

5 Q. He lists a series of reasons as to why the city is going  
6 to reject the DWSD's last offer.

7                 Do you see that?

8 A. Yes.

9 Q. Okay. And I highlighted a few of them. Number 3 says,  
10 "DWSD's offer does not include a guaranteed rate for Years 2  
11 through 30, nor does it provide a maximum annual increase."

12                 Do you see that?

13 A. Yes.

14 Q. And was that a topic of conversation at the time that DWSD  
15 made its last and final offer but before this letter went out  
16 within that 24 or 36 hours?

17 A. Yes. And this was one of the -- this was one of the  
18 differences in the two models between the data the city had  
19 from KWA and how its water contract was structured versus how  
20 the DWSD water contract was structured.

21                 The way DWSD was proposing to operate, how I believe  
22 they continue to operate today, is every year, you know, their  
23 board looks at their cost as they should, as they're legally  
24 required to do. And they project a budget for what it's going  
25 to cost to operate the system, you know, safely and

March 28, 2022

1559

1           efficiently.

2                 And then that cost is distributed among all the  
3                 different rate payers.

4                 So the emergency manager and the finance director  
5                 would, you know, put in the projection, like, an average  
6                 annual increase as a way to try to compare different  
7                 scenarios.

8                 But you have to remember, this is one emergency  
9                 financial manager looking at another city in another public  
10                 entity understanding that there are real concerns about things  
11                 like pension costs and rising cost of healthcare.

12                 There had been different, you know, regulatory  
13                 requirements that DWSD might have to meet.

14                 So it was always thought to be a bit difficult to  
15                 project DWSD's actual costs because each of those 29 years,  
16                 after signing the contract, their board would have to  
17                 undertake that responsibility of setting the rates.

18         Q. And so when you look at number 6, the second sentence  
19                 says, "No indication of what annual rate of increase was used  
20                 in this projection."

21                 Flint can only assume it's 4.4 percent based on the  
22                 Tucker Young report. It's also based on 40.6 MGDs. KWA's  
23                 proposal is for 649,775,166 based on a different number of  
24                 MGDs.

25                 Do you see that?

March 28, 2022

1560

1       A. Yes.

2       Q. And so what does this paragraph say to you in terms of the  
3       expense associated with the DWSD proposal versus the expense  
4       associated with the KWA proposal?

5       A. Well, it means that first of all, the emergency manager  
6       had all these different spreadsheets of these different  
7       projections. So when he got, like, an offer from DWSD, if I  
8       popped into his office sitting there kind of looking at these  
9       spreadsheets and he would be saying, well, if the 4.4 percent,  
10       which was what I think we were all using as an average annual  
11       rate of increase, you know, what would that look like if you go  
12       out 30 years?

13                   So that was one factor.

14                   The other factor in how Ms. McCormick's letter was  
15       phrased about how this could reduce cost for Flint and Genesee  
16       County was it was proposed to be a lower amount of usage. And  
17       that obviously makes a difference. And your projections is  
18       how much you're actually going to buy each year.

19                   So behind this one bullet would be some analysis, and  
20       I don't remember all the details. But I remember those  
21       general themes, because they would come up at different times.

22                   You needed to make sure that your decision was truly  
23       apples to apples. That you're talking about the same amount  
24       of water. You're talking about the same timeframe. You're  
25       talking about, you know, those -- otherwise, one thing is

March 28, 2022

1561

1           going to look cheaper or more expensive.

2                 But you're not really comparing, you know, like to  
3                 like.

4         Q. And that letter that we just looked at from April 16,  
5                 2013, are you aware of whether that letter was actually sent?

6         A. Yes. I'm sure it was. I don't know what produced this  
7                 particular version. It was likely both letter and probably  
8                 PDF'd to the treasurer's office for expediency is my -- but  
9                 that's -- I can't say that for sure.

10        Q. Now, I'd like you to turn if you could, please, to Tab 11  
11                 in your binder. It's a letter that appears to be dated  
12                 April 17, 2013. And it is from Sue McCormick, director of the  
13                 DWSD, to a woman named Ms. Inez M. Brown.

14                 Do you see that?

15        A. Yes. Ms. Inez Brown. She's our city clerk.

16        Q. Contemporaneous with the mailing or the transmission of  
17                 this communication, were you privy to it?

18        A. Yes.

19                 MR. STERN: Your Honor, I would seek to admit into  
20                 evidence Plaintiffs' Exhibit 1101. Let me just make sure it  
21                 had not yet been -- it has not yet been admitted.

22                 MR. CHRISTIAN: No objection.

23                 MR. ERICKSON: No objection.

24                 THE COURT: Okay. It's received.

25                 (Plaintiff Exhibit No. 1101 Admitted Into Evidence.)

March 28, 2022

1562

1 BY MR. STERN:

2 Q. You'll see the date April 17, 2013, right?

3 A. Yes.

4 Q. Now, this is one day -- this communication appears to have  
5 been drafted one day after the letter we just looked at from  
6 Mr. Kurtz, right?

7 A. Yes.

8 Q. You just described Ms. Brown as being the city clerk for  
9 the City of Flint, right?

10 A. Yes. In her role, she's, among other things, the official  
11 record-keeper for the City of Flint. So you can see DWSD wants  
12 there to be no mistake about who is aware of this information.

13 Q. And this is a pretty important letter, right?

14 A. Yes.

15 Q. Why is it important? Why is it important to you what this  
16 letter says?

17 A. Well, at this time, there were both discussions and an  
18 understanding within the city, the City of Flint, that we will  
19 continue to use Detroit while the new KWA pipeline was being  
20 put in place.

21 So in these different spreadsheets that were looked  
22 at, that was part of the equation was there would be a few  
23 years of costs that would still be paid to DWSD for the water  
24 that we had been getting for all these years.

25 And in all the prior years that Flint didn't sign a

March 28, 2022

1563

1       contract with DWSD, they never sent us a letter like this, even  
2       though it would have been within their rights to. They could  
3       have given us notice of termination.

4                   So after paying DWSD for, you know, what, like, 50  
5       years now of water, this seemed like a pretty steep step to  
6       send your customer of 50 years.

7                   Now, at the same time as mayor, I understand that  
8       there's some legal maneuverings that take place. And when I  
9       saw this letter from DWSD, my thought was, "Okay. So we're no  
10      longer on that every year renewal plan price. We're now  
11      sending you notice that if you want DWSD water, it's a new  
12      ball game. There's a new price that's going to be paid."

13                  So I didn't like the form of it. I thought it was  
14      not the way I would have like to seen business conducted. But  
15      at the same time, I understood this is what DWSD is saying.

16                  "You're going in a different direction. You're not  
17      going to be a long-term customer. Okay. A year from this  
18      date as our current contract allows, you're not going to be,  
19      you know, a customer. At least not under this price point."

20      Q. Did you become aware in April around this time of 2013 of  
21      a meeting that took place between Emergency Manager Kurtz, the  
22      Governor Rick Snyder, and Treasurer Andy Dillon?

23      A. Around what timeframe, please?

24      Q. Around the time of this letter. Subsequent to the letter,  
25      but around April 2014 -- sorry -- 2013.

March 28, 2022

1564

1       A. Yeah, to my knowledge, any meeting that the emergency  
2 manager would have had with the governor around that time, I  
3 was also present.

4 Q. Okay. I'm going to show you, if you would please turn to  
5 Tab 14 in your binder. This appears to be an email that was  
6 sent to -- well, I'm sorry.

7                  It appears to be at the bottom, an email from  
8 Mr. Kurtz. And then you respond to this email at the top.

9                  Do you see that? If you go where it says, "Thanks,  
10 Dayne." The next Saturday April 20, 2013 Ed Kurtz wrote.

11                  Do you see that?

12 A. Okay. I apologize. I was looking at the -- at a  
13 different --

14 Q. I promise you it was my fault, not yours.

15 A. So Tab 14?

16 Q. Yes, sir.

17 A. Right. An email from me on Saturday, April 20, 2013,  
18 3:54. Yes.

19 Q. But you see down -- you're responding to an email from  
20 Mr. Kurtz, right?

21 A. Yes. This -- yeah. I just wrote the one line, said  
22 "Thanks Dayne."

23                  And then everything from the -- on Saturday,  
24 April 20, 10:24 A.M., that was from Mr. Kurtz.

25 Q. Understood.

March 28, 2022

1565

1 A. Yeah.

2 Q. Did you receive this email from Mr. Kurtz?

3 A. Yes, I did.

4 Q. And you responded to this email from Mr. Kurtz, correct?

5 A. Yes.

6 MR. STERN: I move to admit into evidence Plaintiffs'  
7 1105.

8 MR. CHRISTIAN: No objection.

9 MR. ERICKSON: No objection.

10 THE COURT: Okay. It's received.

11 (Plaintiff Exhibit No. 1105 Admitted Into Evidence.)

12 BY MR. STERN:

13 Q. All right. So the jury knows what we were just  
14 discussing, you'll see it says on Saturday, April 20, 2013, at  
15 10:24 A.M., Ed Kurtz writes, "Very interesting meeting with the  
16 governor on DWSD. The whole cast of characters were there.  
17 Tucker Young, DWSD, DEQ, governor, treasurer, and the Detroit  
18 EM by phone.

19 "Had a long and sometimes tense change on the same  
20 old issues. Bottom line, the governor has asked us to give the  
21 EM one week to review everything. Following is the schedule."

22 Did I read that correctly?

23 A. Yes.

24 Q. Do you remember if you were at that meeting?

25 A. I was at that meeting, yes.

March 28, 2022

1566

1 Q. And so would you characterize this email from Mr. Kurtz as  
2 a recap of that meeting?

3 A. I apologize. I was looking at the document.

4                   Would you ask the question again, please?

5 Q. No problem.

6                   Would it be fair to characterize Mr. Kurtz's email at  
7 the bottom of this document as a recap of the meeting?

8 A. Yes.

9 Q. And he writes that, "DWSD has until Monday morning at  
10 8:00 A.M. to request any additional information they need,"  
11 right?

12 A. Yes.

13 Q. And do you remember that from the meeting?

14 A. Yes.

15 Q. And then he says, "We have only until 12:00 noon on Monday  
16 to provide such information."

17                   Do you recall that from the meeting?

18 A. Yes.

19 Q. He then goes on to say that, "The Detroit emergency  
20 manager is to respond in writing with his proposal by Wednesday  
21 8:00 A.M."

22                   Do you remember that from the meeting?

23 A. Yes.

24 Q. And then he states that, "Depending on the response, there  
25 may or may not be a face-to-face with the EMs."

March 28, 2022

1567

1                   Do you remember that from the meeting?

2       A. Yes.

3       Q. And who are the EMs he's referring to here?

4       A. So this is Emergency Manager Kurtz in Flint and Emergency  
5                   Manager Kevyn Orr in Detroit.

6       Q. Then it goes on to say, "The governor is not going to  
7                   interfere in the decision and has agreed that Friday, April 26  
8                   is the absolute drop dead date."

9                   Did I read that correctly?

10      A. Yes.

11      Q. Okay. So we just saw a letter from April 15, 2013, where  
12                   the DWSD submits to Mr. Kurtz a new proposal, right?

13      A. Yes.

14      Q. And then the next day on April 16, 2013, Mr. Kurtz sends a  
15                   letter and says, "Thanks but no thanks," right?

16      A. Correct.

17      Q. And then on April 17, 2013, Sue McCormick from the DWSD  
18                   writes to Ms. Brown and says, "Contract over." You've got a  
19                   year effectively, right?

20      A. Yes. And the stamp on the sides, I think the city clerk's  
21                   office saw it on April 18.

22      Q. Okay.

23      A. Yeah.

24      Q. But here we are on April 20, discussing a meeting that had  
25                   taken place apparently at some point between the letter from

March 28, 2022

1568

1       Ms. McCormick and this email.

2                   And it appears that there's still the opportunity for  
3                   the City of Flint to go back to DWSD, right?

4       A. Yeah. So this meeting that's being recapped occurred on  
5                   Friday, April 19. And this is now the governor's addition of  
6                   the last best offer.

7                   So as the governor -- as he opened the meeting, when  
8                   we were together, kind of witnessed one city under emergency  
9                   financial management and another city under financial  
10                  management sending each other, you know, correspondence that  
11                  was not collaborative.

12                  The governor was appealing in his direct authority  
13                  for both sides to go through any outstanding questions, share  
14                  information, see if new proposals could be developed. And that  
15                  would all take place within one week.

16                  So Governor Rick Snyder had a pause in the meeting,  
17                  apparently asked Mr. Kurtz if he would join him as an aside.  
18                  And Mr. Kurtz said, you know, "Mayor, would you go with me?"

19                  We were in a side room in the former -- the State of  
20                  Michigan building in Detroit, the former GM building there.

21                  And Governor Snyder said, you know, "Will you" --  
22                  kind of asking the City of Flint mostly to the emergency  
23                  manager, "Will you allow DWSD to go over this one more time?  
24                  I know you've been going over it all these months."

25                  And Emergency Manager Ed Kurtz worked with him a bit,

March 28, 2022

1569

1       knew him by that point. I could tell he was favorably  
2 inclined. He looked at me. I said, "The governor's asking.  
3 I don't see why not. Why not take another week to make sure  
4 we get this right."

5                  And Mr. Kurtz responded to the governor face-to-face,  
6 "We'll take the week."

7                  And then we went back into the room, and we did this  
8 timeline. So that everybody in the room knew who was going to  
9 do what when. And this very important decision could be made  
10 with full information on the table. The final, final, you  
11 know, last best offer. And any questions could be dealt with.

12 Q. Two more questions about this document.

13                  Number one, do you recall anything in that meeting  
14 where anybody in that meeting raised the issue of safety with  
15 regard to the Flint River or any other water source for the  
16 people of Flint?

17 A. I don't.

18 Q. And then you see this in the paragraph below the list  
19 where I've highlighted just as a side note, "DWSD did agree to  
20 let us opt out if the rates increased by more than 4.7 percent.  
21 I indicated that was not acceptable. We think it's going to  
22 happen and would only further delay the project."

23                  Did I read that correctly?

24 A. Yes.

25 Q. And what's your understanding of that point, that when

March 28, 2022

1570

1       Mr. Kurtz says, "We think it's going to happen and would only  
2 further delay the project."

3                  Based on your being in that meeting, based on you  
4 hearing what happened in that meeting, what's your  
5 understanding of what that line means?

6       A. The projection, I think that's what it was, it was a  
7 projection was that the Detroit Water and Sewerage District's  
8 kind of older infrastructure, older healthcare and cost  
9 benefits just costing all of us more money, that the emergency  
10 manager, you know city's finance director which was Gerald  
11 Ambrose at the time, they believed that the DWSD rates were  
12 going to go up more than that in future years.

13                  That was the number being used to try to create a  
14 fair comparison.

15                  But there was an expectation that it could easily be,  
16 you know, 5.5 or 6.5. That would not have been out of the  
17 realm of what the city would have seen in its own water fund,  
18 especially with healthcare and pension costs.

19                  These pension funds took a huge hit during the  
20 recession. You have a responsibility to try to replenish  
21 those as difficult as that is.

22                  So I think the emergency manager really felt like  
23 this was the time to make the permanent decision about the  
24 City of Flint's water supply for the next 30 or 40 years.

25                  And doing something, you know, now that would just

March 28, 2022

1571

1 resolve the issue for 18 months or 24 months, he was saying,  
2 you know, that's not what he was interested in.

3 MR. STERN: Your Honor, this would be a great time to  
4 stop.

5                   THE COURT: It sure would. It's 1:29, and so it's  
6 good timing.

7                   So members of the jury, thank you for being here, and  
8 we'll return tomorrow, begin at 9:00 A.M.

9 So please rise for the jury.

10 (Jury Out)

11 THE COURT: Mr. Walling, you are free to step down.

12 And we have one issue, which is the witness. Is

13 | that --

14 MR. STERN: Yeah. I'm still focused on Mr. Walling.

15 MR. MASON: Sidebar.

16 THE COURT: Oh, you'd like to do that at sidebar?

17 MR. CAMPBELL: Yes, Your Honor.

18                   THE COURT: Okay. Then -- this is an issue that may  
19 relate to someone's personal life in a way that doesn't need  
20 to be aired.

21 So what we'll do is turn off the Zoom feed, and we  
22 can do that here in the courtroom.

23 MR. CAMPBELL: That's fine.

THE WITNESS: Thank you, Your Honor.

25 MR. STERN: And I apologize. But we'll see you

March 28, 2022

1572

1 tomorrow morning at 9:00 A.M.

2 THE COURT: So the Zoom is off, and we are here at  
3 sidebar.

4 || (Sidebar Conference)

5 MR. CAMPBELL: Okay. Your Honor, I'll start.

6 As to the witness Dietrich White, there are really  
7 two issues to be addressed.

8                   The first is our objection to the newly identified  
9 expert fact -- the newly identified fact witness that we had  
10 taken up at a previous conference. And we submitted to Your  
11 Honor a portion of that transcript.

12                   And as we discussed on Thursday, it was at least my  
13 impression and our impression that the issue was not resolved  
14 by Your Honor, and we were looking to get that resolved.  
15 That's number one. And we'd like to resolve that if possible.

16                   And then secondly is the issue as to Ms. White. And  
17 we had made some filings and back and forth. But in talking  
18 to Mr. Maimon and Mr. Mason this morning, assuming -- well, we  
19 do not believe that Ms. White or the newly identified witness  
20 should be permitted to testify.

21 THE COURT: Understood.

22 MR. CAMPBELL: But if Your Honor is going to allow  
23 that, we would be willing to work with the plaintiff as to a  
24 designation of the deposition testimony assuming that Your  
25 Honor would find her unavailable.

March 28, 2022

1573

1           And we understand from the submission that Mr. Stern  
2 made, you know, attaching an email from Ms. White, she's a  
3 daycare provider and has those issues.

4           But having said that, Your Honor, we have serious  
5 concerns, very great concerns, that this not become a sort of  
6 precedence setting particularly as we're dealing with the  
7 Fifth Amendment issues.

8           And other witnesses who were seeking to be -- you  
9 know, I know it's not. But we need it to say that, that this  
10 is --

11           THE COURT: I hear you. No, I don't fault you for  
12 making that argument. It makes sense to make that argument,  
13 because it's the same rule, I think, in a certain sense that  
14 Mr. Stern and Mr. Maimon are sort of referencing.

15           But I actually didn't view it that way. I viewed it  
16 as a meaningful personal hardship as opposed to unavailable  
17 under the 804 rule.

18           So okay. Let's go back to whether any of these  
19 witnesses who you've identified can testify. And that's  
20 Janeze, J-a-n-e-z-e, Jackson, Melinda Kelly, Philip  
21 Vanderhagen, Sherry Vanderhagen, and Ms. White.

22           Is that the whole universe, Mr. Maimon?

23           MR. MAIMON: Yes, Your Honor.

24           THE COURT: Okay. And you're still hoping to call  
25 each of these individuals?

March 28, 2022

1574

1                   MR. MAIMON: Yes, Your Honor.

2                   THE COURT: Okay. And I read your letter. I read  
3 LAN's emails, as well. And they sign onto your letter or  
4 adopt it themselves, as well.

5                   And what I understand is that what was learned from  
6 these witnesses whose depositions have been taken is that a  
7 few of the underlying facts that would be presented to the  
8 jury are incorrect.

9                   And so these -- of the four plaintiffs, two of them  
10 drank water at different sources than had previously been  
11 known and that the homes that were inspected thoroughly aren't  
12 relevant anymore, because apparently they weren't drinking  
13 water at -- they weren't living there.

14                  Do I understand that?

15                  MR. CAMPBELL: So, Your Honor, as you were saying  
16 those words, I was thinking, "I wonder if that is actually the  
17 full extent of it."

18                  I'm not sure that it is. I think that what we're  
19 dealing with is other places that where the claim is now these  
20 children regularly drank water. I view it as in addition  
21 to --

22                  THE COURT: Okay.

23                  MR. CAMPBELL: -- as opposed to exclusively from the  
24 previous spot. And, of course, it goes to our expert  
25 analysis. It goes to the analysis of the whole case. It goes

March 28, 2022

1575

1 to medical issues. It goes to a lot of things --

2 THE COURT: It does --

3 MR. CAMPBELL: -- that were fundamental to our  
4 preparation.

5 THE COURT: It does. But fundamental to your  
6 preparation was knowledge of human -- the human condition.

7 And at least pre-pandemic, which is when this time  
8 period was, we went places. We went out to eat. We went to a  
9 friend's house. We went to a meeting. We went to a rec  
10 center. Children played at parks with drinking fountains.

11 We did things like that. And you know that and your  
12 experts know that.

13 MR. CAMPBELL: And that's why we asked for the basis  
14 of where these children were drinking. Because we did know  
15 that. And if we were going to be confronted with these  
16 additional places, we asked about that.

17 And, you know, of course, there are the plaintiff  
18 fact sheet. There's initial disclosures. There's testimony  
19 from the -- I think, there were all the mothers of the four  
20 children in their depositions. And there was none of this.

21 So that's why we asked those questions. And then to  
22 be, you know, kind of revealed about pre-pandemic life that,  
23 yes, that actually happened for these children. And even  
24 though you asked, now here we're telling you that.

25 And there was an occasion, Your Honor, where we asked

March 28, 2022

1576

1       for the deposition of the -- all the depositions of the other  
2       parents of these four children. And that was opposed. And  
3       Your Honor said that we couldn't depose those people.

4           And there's at least one of the people that is in  
5       that --

6           THE COURT: Who is that?

7           MR. CAMPBELL: I believe it's Philip Vanderhagen, but  
8       I'd stand corrected.

9           THE COURT: I'm sorry. I didn't hear.

10          MR. CAMPBELL: I believe Philip Vanderhagen is a  
11       parent. But I'd stand corrected if that's wrong.

12          THE COURT: And that is -- Philip Vanderhagen is  
13       somebody who you asked to depose, and I ruled that you could  
14       not?

15          MR. CAMPBELL: Yes.

16          THE COURT: Okay. So let's just talk about Philip  
17       Vanderhagen.

18          MR. MAIMON: Sure. I think that there's a big piece  
19       of this missing in the submission that VNA made to the Court  
20       on Friday. And that LAN joined onto.

21           And that is the presentation of the picture as if it  
22       was submitted to the Court for the first time on the date that  
23       that transcript that they attached in their letter. And  
24       that's not accurate.

25           On January 4, 2022, Ms. Devine, on behalf of VNA,

March 28, 2022

1577

1       wrote to Ms. Calhoun raising the subject and asking for a  
2 conference with the Court.

3             She says, "The VNA defendants and LAN defendants wish  
4 to raise a dispute with the Court regarding the untimely and  
5 improper disclosure of new trial witnesses by bellwether  
6 counsel."

7             And they listed the whole list of all of the  
8 witnesses that were listed in our pretrial order that had not  
9 been in answers to interrogatories before.

10           The Court responded by Ms. Calhoun saying that, "Good  
11 afternoon, everyone. Judge Levy will add this topic to our  
12 in-chambers agenda for tomorrow."

13           This is, again, January 4, 2022.

14           "No need to send any more information in advance.  
15 We'll discuss the positions of both sides tomorrow." And she  
16 signed off.

17           So we did have a conference with the Court. It was  
18 an in-chambers conference, and, therefore, there's no  
19 transcript of it. But this issue was raised.

20           And the Court's resolution at that time was that,  
21 yes, these witnesses can testify; however, number one, they  
22 should -- answers to interrogatories need to be amended to  
23 identify them. That's number one.

24           Number two, the defendants are surely entitled to  
25 depositions. And the Court even mentioned at that time,

March 28, 2022

1578

1       "Listen, we've got a lot to do. We're doing a lot. There  
2 will likely be depositions in the middle of trial."

3           And that was the resolution, and we were instructed  
4 to amend our interrogatories to reflect this. We sent amended  
5 answers to interrogatories.

6           And then it was the dissatisfaction by VNA with the  
7 amendments to the interrogatories that led to the conference  
8 who's transcript is attached to Mr. Campbell's letter on  
9 Friday.

10          And the Court indicated at that time that here is the  
11 resolution that, again, if you don't have the full answers to  
12 interrogatories for these people by a certain date, they will  
13 not be on the witness list. In other words, they will not  
14 testify.

15          However, all of these people who are the subject now,  
16 our answers to interrogatories in a timely way according to  
17 the Court's rulings then identified them and identified which  
18 one of them would speak as to water consumption. They were  
19 all deposed according to the schedule.

20          And now I'll speak about Mr. Vanderhagen.

21          THE COURT: Okay.

22          MR. MAIMON: Because with regard Mr. Vanderhagen,  
23 there came a time when we reached out to defendants because we  
24 had some scheduling problems with his availability and his job  
25 and said, "You know what, we won't call Mr. Vanderhagen. He's

March 28, 2022

1579

1       not -- he won't -- he's having a hard time scheduling it."

2                     And we got an insistent email back by counsel for VNA  
3                     saying, "No. We insist on staying Mr. Vanderhagen's  
4                     deposition." And so we took the deposition.

5                     At the end of the day, Your Honor, this is a matter  
6                     that's been ruled on twice by the Court. Once on January 5 in  
7                     the in-chambers. And then I don't have the date of the  
8                     transcript. I think it was later on in January towards the  
9                     end of January, the transcript that was appended to the letter  
10                    last Friday.

11                  And, again, for defendants who are defending on the  
12                  fact that these are not -- these kids are not injured by any  
13                  lead. And so they have no lead injuries. That's the  
14                  unanimous position of the defense experts. And the Court  
15                  noted that in discussing these matters.

16                  They've been disclosed. They've been deposed.

17                  THE COURT: This is my memory, as well, Mr. Campbell,  
18                  which is that as long as the amended answers were provided in  
19                  a timely manner within this new timeframe, as long as the  
20                  depositions could take place. And apparently  
21                  Mr. Vanderhagen's deposition did take place. Okay.

22                  So now we're at the -- and then the conclusion to  
23                  that was that then they could be called to testify.

24                  And it's not -- and I just repeat that it's not a  
25                  surprise that children don't drink water only at home.

March 28, 2022

1580

1           But it's also not especially not a surprise, because  
2 you heard about this in December and January from the  
3 plaintiffs that as they were preparing the final pretrial  
4 order and their list of witnesses, you alighted on the fact  
5 that there was not -- you had not previously understood that  
6 or been informed that these witnesses were going to be  
7 involved.

8           So we took care of that.

9           So now the question is just whether Ms. White is  
10 unavailable. And I think she's not unavailable in the  
11 traditional sense. It's a personal hardship for her and the  
12 people at her -- the families who rely on her for daycare.

13           Oh, Mr. Mason wants to speak.

14           MR. MASON: Yeah. I was just going to say I think  
15 it's appropriate to handle this that we stipulate. We want to  
16 work with plaintiffs' counsel. We're not trying to be  
17 difficult.

18           But this slippery slope issue is a major concern and  
19 cannot, you know, be repeated, if you will, or people think  
20 they can repeat it in advance.

21           You're right. This appears to be a legitimate unique  
22 situation. And so our position is we're willing to stipulate  
23 that they can play the videotape in an effort to, you know,  
24 work with them.

25           But not have any precedent either with Fifth

March 28, 2022

1581

1       Amendment witnesses or with the many, many other witnesses in  
2       the future.

3                     THE COURT: No. There won't be any precedent.

4                     I think with other witnesses we just have to hear  
5       what it is. If somebody's sick, if somebody's -- unexpectedly  
6       a death in the family. All sorts of things are going to  
7       happen between now and the end of the trial. So we'll take it  
8       on a witness-by-witness basis.

9                     MR. MASON: I agree.

10                  THE COURT: Okay.

11                  MR. MASON: But I do not believe she's unavailable.  
12       There are many witnesses that have things. So she is within  
13       subpoena range.

14                  THE COURT: She is.

15                  MR. MASON: She is available. And that's why I think  
16       it should be clear that we're stipulating to it.

17                  THE COURT: Of course.

18                  MR. MAIMON: I appreciate that Mr. Campbell is. But  
19       I heard something else from -- I'm sorry. I appreciate that  
20       Mr. Mason is willing to stipulate. But I heard something  
21       different from Mr. Campbell saying he's asking for the Court  
22       to determine that she's unavailable.

23                  THE COURT: No, I don't think --

24                  MR. CAMPBELL: I'm fine. And I agree. I would  
25       prefer to do it by way of stipulation under these particular

March 28, 2022

1582

1       circumstances for the reasons that Mr. Mason said.

2           MR. MAIMON: That's acceptable to us, Your Honor.

3           THE COURT: Okay. So there's a stipulation.

4           And my only question is if you wanted to retake the  
5 deposition as a trial deposition.

6           MR. CAMPBELL: See that's where we -- we're agreeable  
7 to do this if the existing deposition is used, Your Honor.

8           THE COURT: You're agreeable to use the --

9           MR. CAMPBELL: The existing deposition.

10          THE COURT: Okay. All right. Great. Then what I  
11 would need is the designations for the existing and the  
12 objections.

13          Are there a lot of objections?

14          MR. STERN: It's a very short deposition. It's less  
15 than 130 pages. There are some -- there are a number of  
16 objections. But they're all sort of in the same wheelhouse of  
17 objections.

18          THE COURT: Okay.

19          MR. STERN: It's unlike any of the other depositions  
20 Your Honor has ruled on, because the length of the deposition  
21 is somewhat shorter.

22          THE COURT: Okay.

23          MR. MAIMON: We should be able to have designations  
24 to the defendants before the close of today, and hopefully  
25 they can turn around quickly.

March 28, 2022

1583

1                   MR. CAMPBELL: We can turn that around quickly, Your  
2 Honor.

3                   THE COURT: Okay.

4                   MR. CAMPBELL: I just want to finish, if I may, Your  
5 Honor, to make the record as to these witnesses.

6                   THE COURT: You may, yes.

7                   MR. CAMPBELL: Your Honor said that we were not  
8 surprised, because we were advised of --

9                   THE COURT: No, I'm just saying factually it's not  
10 shocking factually that a child goes to a playground, goes to  
11 a relative's house, goes to a birthday party.

12                  MR. CAMPBELL: But, Your Honor, it is shocking that  
13 none of this was disclosed before the exchange of trial  
14 witnesses.

15                  After this lengthy pretrial process with all of the  
16 discovery, all of the efforts to learn where these children  
17 had been drinking water and whether or not they were drinking  
18 water from places that may or may not have had lead and  
19 service lines.

20                  And we went through extensive efforts to document  
21 that. And it's all -- it feeds into experts. These are  
22 foundational basic facts. And they're now different.

23                  THE COURT: I understand that. Let me ask a quick  
24 question.

25                  MR. CAMPBELL: Potentially different.

March 28, 2022

1584

1                   THE COURT: In the fact sheet, is there an area to  
2 say, "List every place you were exposed to water or water  
3 based food or" --

4                   MR. CAMPBELL: Sitting here, Your Honor, I didn't  
5 look at it.

6                   I do know is we led up and spoke to Your Honor about  
7 this issue. We were looking at the fact sheets, and there  
8 were opportunities to disclose these types of witnesses. And  
9 that's how we learned about it.

10                  And if I may say something about Ms. White, just like  
11 our efforts to depose the other parent for these children, we  
12 made efforts to depose daycare providers and other people  
13 that, you know, generally fit into that kind of a category.  
14 Teachers.

15                  And we -- there was one teacher that we actually took  
16 by way of written deposition questions, because Your Honor --  
17 again, we wanted to do them. There was an objection. And I  
18 forget exactly how we got to the one teacher that we did by  
19 way of written questions or at least the one that I remember.

20                  But certainly if we had known that Ms. White was  
21 going to be a trial witness, we would have pursued that. I  
22 mean, there's just no doubt.

23                  THE COURT: I hear you. I understand what you're  
24 saying.

25                  The decision has been made two or three times by now

March 28, 2022

1585

1       that -- as I recall it, plaintiffs informed me that these  
2       names were identified in depositions as they went along.

3           They were not specifically put on an earlier witness  
4       list exchange or -- but the decision was made that there are a  
5       finite number of them. That if the supplements to the answers  
6       to the interrogatories and depositions could be taken, then  
7       they would be trial witnesses.

8           So I think that's where we are now.

9           MR. CAMPBELL: All right, Your Honor. I certainly  
10      understand now you've resolved the issue. And I thank you  
11      very much for taking the time.

12           THE COURT: Thank you.

13           MR. STERN: Your Honor, just for the sake of the  
14      record, I think it's important to note that at various times  
15      during the history of this litigation, there were 150  
16      bellwether plaintiffs.

17           And then that got narrowed to 50. Then it got  
18      narrowed to 16 because of COVID. And so we've used apples and  
19      oranges a few times during this trial.

20           But we have not been operating with four individual  
21      plaintiffs for the last four years in terms of some of these  
22      disputes.

23           And so when you're dealing with the depositions of  
24      potentially teachers or second parents for 150 kids or for 50  
25      kids, that presents a different issue than what is plaintiffs

March 28, 2022

1586

1       you're looking at when you're dealing with getting ready for a  
2 trial for four.

3                   And so to the extent that there's a record, I just  
4 want to note that various points in time when some of these  
5 issues were raised, the picture of children was larger than  
6 the four that are here at trial.

7                   MR. CAMPBELL: And, Your Honor, just to make the  
8 record clear. It wasn't 150, and it wasn't 50. It was 14  
9 when we started taking depositions.

10                  THE COURT: The depositions.

11                  MR. CAMPBELL: So it's simply not fair to suggest  
12 150.

13                  THE COURT: Yeah.

14                  MR. CAMPBELL: And it was from those 14 that we  
15 wanted to take additional depositions. And that's when the  
16 motions were objected to and Your Honor entered the orders  
17 that I referenced.

18                  THE COURT: Okay. And in the course of litigation,  
19 the other thing that goes on and that has happened here, I've  
20 presided over all of the discovery disputes. There's no  
21 magistrate or special master doing that.

22                  Both sides have needed more time, more pages, more  
23 briefs. And that's the nature of litigation. And it's within  
24 that discretionary authority that I made this decision.

25                  Having watched the ups and downs, the ebbs and flows

March 28, 2022

1587

1       -- I mean, I could have said actually when I expanded the  
2 number of pages on one of the motions in limine, I thought  
3 that that was going to be the only motion in limine. I had  
4 actually taken a poll in chambers on how many there would be.

5                  And then when I got that expand to 35 pages I said,  
6 "Okay. I lose. I have the wrong number of motions in limine  
7 in my poll. I'm not going to get a free cup of coffee."

8                  And but lo and behold, no, that was one of, you know,  
9 nearly 20 different motions in limine.

10                 So there's ample discretion -- I have exercised my  
11 discretion to say, "Yes. Okay, I will deal with all of the 15  
12 to 20 motions in limine regardless of the number of pages that  
13 VNA has filed or LAN. I'll deal with all of the Daubert  
14 motions. There's no limit."

15                 Of course, there wouldn't be a limit. But all of the  
16 elements on all of the Daubert motions that have to be  
17 addressed.

18                 So I just suggest to you that the discretion goes in  
19 all different directions. It's not just being exercised in  
20 favor of the plaintiffs, because this singular decision goes  
21 in the direction that they're seeking relief.

22                 So is there anything else on the record right now?

23                 MR. CAMPBELL: Certainly not your guess as to the  
24 motions in limine.

25                 THE COURT: Okay. No.

